

**THE APPROACH TO CORRUPTION IN LAW AND
DEVELOPMENT: TOWARDS A RIGHTS-BASED PERSPECTIVE
IN SUB-SAHARAN AFRICA**

by

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Abstract

At the Annual General Meeting of the World Bank in 1996, its President James D. Wolfensohn, in an epoch-making speech, referred to the 'cancer of corruption' as a major barrier to sound and equitable development which had to be dealt with urgently. This speech was the culmination of a change in ideology and practice at the Bank towards dealing with governance generally and anticorruption in particular. Hitherto, the field of international development had dedicated negligible attention to the impact of corruption on development and the design of policies and programmes dealing with corruption. In the period since, anticorruption efforts have become a significant pillar of the policies and practices of the Bank and other development actors with attendant ramifications in countries in the global South, especially in sub-Saharan Africa.

Using the various moments of ideological change in the law and development movement as an analytical framework, this thesis examines the indifference to corruption in international development in the period preceding the 1990s, and the attributes, challenges and prospects of the current global anticorruption agenda in sub-Saharan Africa. With Nigeria as a case study, the research finds that the approach to corruption has been overwhelmingly influenced by the respective predominant global development ideology during each moment, whilst ignoring local experiences and efforts to address corruption. Hence, despite the heightened attention to the issue in the last couple of decades, anticorruption reforms have failed to enhance pre-existing efforts to deal with corruption in countries.

The thesis concludes that the currently evolving paradigm of a rights-based approach to anticorruption demonstrates a promising response to some of the shortcomings of this approach to corruption over the years. However, the nature of its conception and proposals for its implementation reaffirms the entrenched nature of these shortcomings and their inherence in the overall strategy of law and development reforms in countries in sub-Saharan Africa.

Dedication

To 'mama', Tonzighe Dieghe Ekeuwei

*From rowing rain-soaked at night
To the many lows below Big Joe when I reckoned I never might
'Twas your faith that bore me hence
Half a million letters testament to your dreams in every sense*

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On a rather sad note, I must add a fresh paragraph here because Prof. Gordon passed away on the morning of my viva. It is a painful reality that has been challenging to deal with, especially because I never got to tell him how grateful and honoured I am to have learnt from his extensive knowledge, experience and uniquely genial mentorship. "Thank you, Gordon, for literally seeing me through to the finish line of this research project and for everything else. With the steadfast support of Prof Rilka, I crossed that finish line successfully. The project we started together is herewith completed, and I am indeed grateful." Words fail me. . . .

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European Convention for the Protection of Human Rights and Fundamental Freedoms 213 UNTS 222

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Nigerian Legislation

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Criminal Code 1916

Decree No. 38 of 1975

Decrees Nos 20, 21 and 22 of 1984

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Nigerian Cases

Attorney-General for Rivers State vs. The Economic and Financial Crimes Commission & 3 Others (FHC/PHC/CS/78/2007)

Dr. Olubukola Abubakar Saraki v. Federal Republic of Nigeria (2016) LPELR-400013(SC)

Dr. Peter Odili v. The Attorney General of the Federation & The Economic and Financial Crimes Commission (FHC/PHC/1291/2007)

Fawehinmi v. Akilu (1987) 4 NWLR (Pt 67) 797

Federal Republic of Nigeria v. Dr. Olubukola Abubakar Saraki (CCT/ABJ/01/2015)

Ogbuagu v. Ogbuagu [1981] 2 NCLR 680

Owudunmi v. Celestial Church of Christ (2001) 1 WRN 145

Cases from Other Jurisdictions

British American Tobacco Ltd v. Environmental Action Network Ltd (2003) 2 EA 377 - PAKISTAN

Claude Reyes et al. v. Chile, Case No. 12.108 (19 September 2006) - CHILE

Donoghue v Stephenson (1932) AC 562, HL - UNITED KINGDOM

Fazal Din v. Lahore Improvement Trust 21 DLR (SC) 225 - PAKISTAN

Fertilizer Corporation Kamager Union v. Union of India (1981) AIR 344 – INDIA

Greenwatch v. Attorney-General and Others (2003) 1 EA 87 – UGANDA

Minister of Health & Others v. Treatment Action Campaign & Others (No.2) Case CCT 8/02 [2002] ZACC 15 – SOUTH AFRICA

NAACP v. Button 371 US 138 – UNITED STATES

R v White [1910] 2 KB 124 - UNITED KINGDOM

SP Gupta v. Union India (1982) 2 SCR 365 – INDIA

International Courts, Commissions and Committees

ECOWAS Court of Justice

Socio-Economic Rights and Accountability Project (SERAP) v. Federal Republic of Nigeria, Suit No. ECW/CCJ/JUD/18/12

Socio-Economic Rights and Accountability Project (SERAP) v. President of the Federal Republic of Nigeria and Another, Suit No. ECW/CCJ/APP/12/07

African Commission on Human and Peoples' Rights

Sir Dawda K. Jawara v. The Gambia, Communication 147/95 (11 May 2000)

The Social and Economic Rights Action Centre (SERAC) and the Centre for Economic and Social Rights (CESR) v. Nigeria, Communication 155/96 (27 October 2001)

UN Human Rights Committee

Ilmari Lansman v. Finland (24 October 1994) CCPR/C/52/D/511/1992

List of Abbreviations

ACHPR	-	African Commission on Human and Peoples' Rights
AG	-	Auditor-General
APC	-	All Progressive Congress
APPP	-	Africa Power and Politics Programme
AU	-	African Union
BEEPS	-	Business Environment and Enterprise Performance Survey
BMPIU	-	Budget Monitoring and Price Intelligence Unit
BPP	-	Bureau of Public Procurement
CCB	-	Code of Conduct Bureau
CCT	-	Code of Conduct Tribunal
CDF	-	Comprehensive Development Framework
CPI	-	Corruption Perceptions Index
CRC	-	Convention on the Rights of the Child
CSO	-	Civil Society Organisation
CUP	-	Cambridge University Press
DfID	-	Department for International Development
ECOSOC	-	Economic and Social Council
ECOWAS	-	Economic Community of West African States
EFCC	-	Economic and Financial Crimes Commission
EU	-	European Union
FRC	-	Fiscal Responsibility Commission
GAB	-	Global Anticorruption Blog
GCR	-	Global Corruption Report
GDP	-	Gross Domestic Product

GFI	-	Global Financial Integrity
GNP	-	Gross National Product
HDR	-	Human Development Report
HRC	-	Human Rights Council
ICESCR	-	International Covenant on Economic, Social and Cultural Rights
ICHRP	-	International Council on Human Rights Policy
ICPC Commission	-	Independent Corrupt Practices and other related offences
ICRG	-	International Country Risk Guide
ICVS	-	International Crime Victims Surveys
IDI	-	International Development Institution
IFI	-	International Financial Institution
IMF	-	International Monetary Fund
INEC	-	Independent National Electoral Commission
ISI	-	Import Substitution Industrialisation
MTEF	-	Medium-Term Expenditure Framework
NDLEA	-	National Drug Law Enforcement Agency
NGO	-	Non-Governmental Organisation
NIEO	-	New International Economic Order
NNPC	-	Nigerian National Petroleum Corporation
OAS	-	Organisation of American States
OECD	-	Organisation for Economic Cooperation and Development
OHCHR Rights	-	Office of the United Nations High Commissioner for Human
OPEC	-	Organisation of the Petroleum Exporting Countries
OUP	-	Oxford University Press

PDP	-	Peoples Democratic Party
PWYP	-	Publish What You Pay
RBAA	-	Rights-Based Approach to Anticorruption
SADC	-	Southern Africa Development Community
SAP	-	Structural Adjustment Programme
SERAP	-	Socio-Economic Rights and Accountability Project
SSA	-	Sub-Saharan Africa
TI	-	Transparency International
TUGAR	-	Technical Unit on Governance and Anti-Corruption Reforms
UDHR	-	Universal Declaration of Human Rights
UN	-	United Nations
UNCAC	-	United Nations Convention Against Corruption
UNDP	-	United Nations Development Programme
UNHRC	-	United Nations Human Rights Council
UNICEF	-	United Nations Children's Fund
UNODC	-	United Nations Office on Drugs and Crime
USAID	-	United States Agency for International Development
WGI	-	Worldwide Governance Indicators

Chapter One: INTRODUCTION

1.0 Background to the Thesis

In the period before the 1990s, there was very little attention to the issue of corruption in the law and development movement. International Development Institutions (IDIs) like the World Bank, the International Monetary Fund (IMF) and the United Nations (UN) had no clear-cut anticorruption programmes or policies for countries in sub-Saharan Africa (SSA). There were no recognised international Civil Society Organisations (CSOs) dealing directly with the issue of corruption either. Academic enquiry into the subject was also negligible. In the same vein, there were hardly any anticorruption institutions, legislation, policies or programmes dealing distinctly with corruption - as a development issue rather than as a crime - at the local level.

However, in the period since, corruption has risen to a prominent place in the field of development. Led by the World Bank, anticorruption and the broader issue of governance are now central to the work of most IDIs. There is also now a plethora of international instruments dealing with corruption. This change in approach to dealing with corruption at the international level has been duly reflected at the local level in countries in SSA. Most countries in the region now have some sort of anticorruption policy or programme. In certain cases like Nigeria, much legislation has been passed and a good number of anticorruption institutions established within the last couple of decades.

However, after about two decades of vigorous attention to corruption, not much has been achieved. Whilst there is admittedly better understanding of the nature and effect of corruption on development, the impact of anticorruption efforts on reducing corruption, and by implication enhancing development have been disappointing. There is little evidence to show that corruption in countries in the region has diminished because of the introduction of anticorruption programmes and policies.

Research on this subject often points to how the features of anticorruption policies and programmes within countries, the nature of their implementation, and contextual socio-cultural, economic, political and institutional factors are responsible for their ineffectiveness.¹ Without questioning the role of these factors, this thesis looks at the problems of anticorruption efforts in the region from a broader perspective, as a reflection of the attributes and problems of the approach of the law and development movement to the issue of corruption over the years.

The three discernible periods of ideological change which the law and development movement has undergone in its history – often referred to as ‘moments’² - are employed as an analytical framework for the discourse in this work. This makes it possible to demonstrate the evolution of the approach of the movement to corruption from the past to the present and in terms of emerging approaches for the future. The primary objective is to identify the influence of the approach of the movement on

¹ See for instance, Kolawole Olaniyan, *Corruption and Human Rights Law in Africa* (Hart Publishing 2014) 51-53; Johann Graf Lambsdorff, ‘Causes and Consequences of Corruption: What do we Know from a Cross-Section of Countries?’ in Susan Rose-Ackerman (ed), *International Handbook on the Economics of Corruption* (Edward Elgar Publishing 2006) 3-51.

² A moment is used with reference to a period in which law and development doctrine has crystallised into an orthodoxy that is relatively comprehensive and widely accepted. Other words used in its place in law and development literature include ‘period’, ‘globalisation’, ‘generation’, etc. See David M. Trubek and Alvaro Santos (eds), *The New Law and Economic Development: A Critical Appraisal* (CUP 2006) 1-2.

current anticorruption efforts in the region and the ramifications for further reforms. Regarding the latter, the thesis examines the emerging concept of a rights-based approach in anticorruption efforts. Since the turn of the century, the idea of tackling corruption through a human rights framework has received growing attention from academics and relevant IDIs, some of which are already taking steps towards operationalising this approach.³

The choice of the rights-based approach for discussing the implications for future reforms is drawn from the theoretical and practical justifications underlying the case made for its integration in anticorruption efforts. The approach is considered a response to one of the most enduring criticisms of the approach to corruption in law and development: the top-down nature of most programmes and policies. The rights-based approach is therefore expected to provide a bottom-up element to anticorruption efforts built on established human rights principles and practices. In examining this approach, this thesis however questions whether the nature of its conception and proposals for its implementation indicate that the lessons of the approach to corruption in law and development have been learnt; a stance necessitated by the fact that the very problems that precipitated the rights-based approach are inherent in the steps being taken towards its implementation.

³ See OHCHR, 'The Human Rights Case Against Corruption' (UN, Geneva November 2013); Magdalena Sepúlveda Carmona and Julio Bacio-Terracino, 'Corruption and Human Rights: Making the Connection' in Martine Boersma and Hans Nelen (eds.) *Corruption & Human Rights: Interdisciplinary Perspectives* (Intersentia 2010) 25-49; C. Raj Kumar, 'Corruption, Development and Good Governance: Challenges for Promoting Access to Justice in Asia' (2008) *Michigan State Journal of International Law* 475, 550.

To provide a specific context to the discourse, Nigeria is used as a case study for anticorruption regimes in countries in SSA. This is to provide a practical illustration of the impact of the approach of the law and development movement to corruption at the global level on the response to corruption at country level. Furthermore, the use of a case study makes it easier to demonstrate the policy implications of the thesis.⁴

1.2 Research Questions

This thesis examines the attributes, challenges and prospects of anticorruption efforts in countries in SSA in the context of the broader approach to corruption in the law and development movement. It adopts a historical approach to demonstrate the influence of the relationship between the approach of the law and development movement and the reasons for the ineffectiveness of anticorruption efforts in the region.

Within this thesis, there are two major research questions:

- What is the approach of the law and development movement to the issue of corruption?

⁴ Throughout the rest of this work therefore, the use of SSA should be understood in the context of Nigeria. Whilst aware of the need to avoid undue generalisations, the reference to SSA is maintained due to the similar implications of the discussions in this work for countries in the region. With general development policies and on the issue of anticorruption in particular, IDIs have often dealt with countries in the region with a broadly similar approach. Hence, the unavoidable reference to the region in most aspects of this work. A background to Nigeria and the justification of its choice is considered below.

- What are the ramifications of this approach - especially its changes over time - for current and proposed anticorruption efforts in SSA?

To effectively deal with these major research questions, more detailed questions will be examined.

On the first major research question on the approach of the law and development movement to the issue of corruption, this thesis will consider further subsidiary questions such as, what are the major factors that defined the approach to corruption through the different moments of the movement? What informed the change in approach from one moment to the next? Have successive changes in approach within the movement been defined by lessons of practical implementation of programmes in countries from the previous moments or have they been defined by ideological changes within the development field? And finally, are there lines that can be drawn through the approach to corruption employed in the different moments and can such factors provide insights on the problems of the approach during the various moments?

Regarding the second major research question on the implications of the approach for current anticorruption efforts in SSA and proposals for future reforms, the following ancillary questions will be examined: To what extent has the approach to corruption in the law and development movement at the global level defined the establishment and composition of anticorruption regimes in countries in the region? Is there any link between the problems faced by the law and development movement and the challenges faced by anticorruption regimes in the region? Are the lessons learnt by the law and development movement over the years been reflected in the

implementation of current anticorruption programmes and policies at the country level?

If so, has the integration of such lessons enhanced anticorruption efforts in the region, and if not, why not?

After over two decades of concerted anticorruption efforts, there is growing frustration from both the law and development movement at the global level and from governments and citizens in countries in SSA at the rate of progress thus far. Explanations for the slow rate of progress has often been directed at the lack of political will to implement reforms, political interference in the work of anticorruption agencies and weak institutions in countries in the region, amongst others. In essence, the blame for the ineffectiveness of anticorruption efforts has largely been laid on internal factors within countries. However, the overwhelming influence of IDIs in the establishment and implementation of anticorruption efforts in these countries makes it expedient to examine the possible impact of factors within the development field on the ineffectiveness of such anticorruption efforts. It is hoped that understanding the dynamics of the relationship between these internal and external factors will provide insights for a more comprehensive understanding of the challenges of anticorruption efforts in the region and thereby inform better reforms.

1.3 Methodology

In addressing the research questions, this work adopts a socio-legal methodology, with the specific application of document analysis qualitative research method.⁵ This method was chosen because it is apt for analysing the broad range of academic, policy and evidentiary documents that the thesis engages in. Furthermore, document analysis provides a dependable means of tracking change and developments on a particular subject or in a particular field, as is the case with research undertaken here.⁶

Due to the wide and varied range of sources and materials consulted in carrying out this research, the grounded theory research method was applied in the analysis of the documents.⁷ This method involves developing theory and arguments on a subject matter as the research proceeds, rather than testing a hypothesis posited in advance, as is often the case. In practical terms, the application of this method involves going through the three stages of open coding, axial coding and reaching conclusions.⁸ This method was chosen because it provides the best method of going through a large

⁵ Glenn A. Bowen, 'Document Analysis as a Qualitative Research Method' (2009) 9(2) *Qualitative Research Journal* 27-40.

⁶ Other advantages of document analysis as a qualitative research method which proved essential to its choice for this research include availability, lack of obtrusiveness - which can hardly be avoided with other methods like interviews and questionnaires, - stability, accuracy and the ability to cover a long span of time and wide range of events and contexts. See Robert K. Yin, *Case Study Research: Design and Methods* (Sage 2009).

⁷ Lisa Webley, 'Qualitative Approaches to Empirical Legal Research' in Peter Cane and Herbert M. Kritzer (eds), *The Oxford Handbook of Empirical Legal Research* (OUP 2012) 926-951.

⁸ The first stage of open coding involves reading the various documents line by line, analysing them and systematically taking notes with the objective of identifying conceptual categories and patterns from the data. The second stage of axial coding entails establishing relationships, associations and patterns arising from applying open coding to various documents on the subject. This forms the basis for the third stage involving the development of core concepts, theories and conclusions based on the categories and relationships identified in the second stage. See Webley (n 7) 943-944.

number of documents, in comparison to other methods like classic document analysis and discourse analysis. Also, the method allows the researcher to follow the natural pattern of human enquiry and avoids any preconceived arguments or biases that could unduly influence the progressive pattern of the research process.⁹

It is worth noting that there have been some criticisms of document analysis as a qualitative research method. These include the challenge of accessing needed documents and the problem of selective bias.¹⁰ In the particular context of this thesis, there were no obvious access challenges as most of the documents needed to deal appropriately with the research questions were readily available through the wide range of sources utilised and identified below. On the issue of selective bias, much attention has been given to the need for objectivity throughout the research process and various tests have been applied as guides to ensure such objectivity. The list of eight questions developed by Ruth Finnegan to ensure robustness and objectivity in the selection, analysis and review of documents in a research process were particularly significant in this regard.¹¹

In terms of particular sources used, the work draws on secondary literature and materials including academic works, such as books and journal articles of researchers for the historical discourse of the law and development movement. Policy documents

⁹ *ibid.* See also Barney G. Glaser, *Basics of Grounded Theory Analysis: Emergency Vs. Forcing* (Sociology Press 1992) 1-22.

¹⁰ Bowen (n 5) 31-32.

¹¹ Some of these questions include: Has the researcher considered the issue of twisting and selection of facts in the sources used and in the approach of the researcher? How far does a source document reflect the general situation? How relevant is the context of the document? What presumptions were behind the statistics provided in the document, if any? Does the interpretation reasonably represent the context of the document? See Ruth Finnegan, 'Using Documents' in Roger Sapsford and Victor Jupp, *Data Collection and Analysis* (2nd Edn, Sage Publications Ltd 2006) 138-151.

of IDIs are also consulted to interpret from such direct sources, the nature and attributes of the approach of the movement. This makes it possible to make comparisons between policies, academic commentary on them and their implementation.

With regard to the case study of Nigeria, this work draws from a variety of sources to appropriately illustrate the basic facets of the anticorruption regime in the country and its challenges. To achieve this, sources consulted include legislation, reported cases dealing with corruption, policy documents of IDIs on Nigeria, and reports of relevant authorities and institutions, including CSOs. Where necessary, reference is made to news articles on corruption.

It is necessary to make a few points here. The first is that, with respect to policy documents of IDIs, reference is made to documents emanating from the World Bank more than any other such institution. This is because of the central role played by the Bank in mainstreaming the issue of corruption in the field of development. Hence, whilst reference is made to policy documents of other IDIs at various stages, the principal focus on the Bank is apparent through the work.

Secondly, due prudence has been applied in the use of news articles when discussing the anticorruption regime in Nigeria. Discretion has been exercised to ensure that such articles are only used as references for established facts and figures about events of corruption that have occurred in Nigeria in the timeframe considered in the study. They are only used to illustrate attributes of the regime in the country and for

situations where the facts cannot otherwise be acquired from official or other primary sources.

Finally, it is worth noting that the analysis of the approach to corruption in law and development undertaken in this work has been underpinned by the theories of modernisation and dependency. Modernisation theory advances a relationship of qualified cooperation between the global South and global North based on the premise that former needs to follow the development path of the latter in order to evolve from their traditional state to modernised societies.¹² Dependency theory, on the other hand, states the position that prevalent development models are designed to ensure that global South countries remain perpetually dependent economically on countries in the global North. Hence, the latter should rather adopt inward-looking policies that prevent their exploitation by countries in the global North.¹³ The tension between these theories and their impact is obvious in the analysis undertaken throughout the thesis.

1.4 Structure of the Thesis

The rest of this introductory chapter looks at several important concepts that underlie this research and therefore require a preliminary consideration. The following issues

¹² Lan Cao, 'Law and Economic Development: A New Beginning? Review of Anthony Carty (ed) *Law and Development*' (1997) 32 Texas Intl LJ 545-560; Henry Bernstein, 'Modernisation Theory and the Sociological Study of Development' (1971) 7(2) The Journal of Development Studies 141-160.

¹³ Kevin E. Davis and Michael J. Trebilcock, 'The Relationship between Law and Development: Optimist versus Sceptics' (2008) 56 American Journal of Comparative Law 895-946.

are considered: The law and development movement; corruption and the rise of “anticorruptionism”,¹⁴ and the movement towards a rights-based perspective in anticorruption efforts. The discussion of these issues at this stage is important because they are central to the theses of the work. Also, these are concepts that are drawn from fields of research as diverse as development, legal theory, corruption and human rights. Their consideration in this work is intended to demonstrate how the interplay between developments in each of these areas have informed policy and practice in anticorruption. The final section of this chapter examines and justifies the choice of Nigeria as a case study.

Chapter two discusses the concept of corruption. The meaning of corruption and its various manifestations continue to be a subject of controversy in global development discourse. Widely accepted definitions like that of the World Bank which considers corruption as the “abuse of public office for private gain” in its work,¹⁵ reflects the conceptual foundations of the global anticorruption movement. This chapter considers the roots of such definitions and the impact within the conceptual and geographical context of this work. The discussion will also cover the nature and types of corruption in SSA, the issues involved in measuring corruption and the impact of the parameters used in major indices quantifying corruption. Also considered is the effect of corruption on development. This part of the work shows how the understanding and attention to the effect of corruption progressed in line with predominant global development ideology from economic effects to socio-political and on to human development. Attention is given to the effect of corruption on human rights which constitutes the main justification for the evolving paradigm of a rights-based approach to anticorruption.

¹⁴ The meaning of this term in the context of this work is examined below.

¹⁵ World Bank, *Helping Countries Combat Corruption: The Role of the Bank* (PREM 1997) 8.

Chapter three deals with the approach to corruption in the first and second moments of law and development. This is done in manner that highlights the broader relationship between development ideology and the approach of the law and development movement to corruption. To this end, the chapter discusses for each moment, the prevalent development ideology, the role of law in the development process within such ideology and how this relates to the approach adopted towards corruption. The Nigerian situation during both moments is used to provide a national context for the approach to corruption. Both moments are discussed in the same chapter because of the similarity in the approach adopted towards corruption during the periods in question.

The possible explanations for the indifferent approach to corruption in the first and second moments of law and development are considered in chapter four. The factors discussed here are symptomatic of the broader problems and criticisms of law and development through its rather tumultuous history. There are claims that the change in the approach to corruption in the third moment of law and development shows that the movement has perhaps learnt lessons from its past. In this respect, this chapter will provide a basis for comparison when discussing the problems of the anticorruption movement in the third moment later in the work, to determine the value of such claims.

Chapter five considers the approach to corruption in the third and current moment of the new developmentalism. Akin to the pattern adopted in discussing the two previous moments, the discourse here will start by identifying the major tenets of the moment, the predominant definition of development and the role of law during this moment. There will be a consideration of the swift change in approach to corruption within the movement and the resultant emergence of robust anticorruption regimes in countries like Nigeria. In further illustration of this, the chapter looks at the main facets of the

legal and institutional framework for anticorruption in the country since the heightened attention to corruption at the global level. More importantly, the chapter explores the question of how much this current robust regime has impacted efforts to address corruption in comparison to pre-existing efforts in the country.

Chapter six brings the discussion full circle by looking at how the factors which explain the lack of attention to corruption in the first and second moments of law development have persisted under the current moment. Hence the discussion here is balanced against chapter four and examines why the introduction of a robust anticorruption regime in a country like Nigeria has had little success in tackling corruption. In doing so, it moves beyond much reiterated internal problems in countries that impede anticorruption efforts and looks at 'supply side' factors within the law and development movement that betray the acclaimed commitment to addressing corruption, especially in the last couple of decades.

In the light of the negligible results achieved by efforts to deal with corruption in countries like Nigeria, chapter seven looks to the future of anticorruption efforts especially for countries in SSA. It focuses on the emerging concept of a rights-based approach to anticorruption as an alternative to the current top-down institutional approach. The chapter discusses its background and potential practical advantages in terms of what it would add to current anticorruption efforts. The chapter concludes by looking at the proposals for the implementation of this approach by academics and various IDIs in the last decade or so and questions if the approach - as indicated by such proposals - provides the right answers to the lingering problems of the approach of law and development to corruption.

Chapter eight terminates the thesis by looking at conclusions and the policy implications in the area of anticorruption for the law and development movement.

1.5 The Law and Development Movement

The relationship between law and development has been a subject of academic interest since at least the eighteenth century. Classical scholars like Marx, Weber, Maine and Montesquieu all refer, in varying ways, to the role of law in the process of economic development within the broader scope of their respective works.¹⁶ However, the origin of the modern discourse on law and development can be traced back to the initiatives of academics in the United States and development experts in the 1950s to 1960s. The movement itself evolved out of the need to promote legal and institutional reforms in the newly independent countries of the so-called global South with the objective of facilitating economic development based on the model of countries in the so-called global North.¹⁷

Following the wave of independence of countries in the global South in the post-World War II era, the policy of IDIs like the World Bank underwent a considerable change in

¹⁶ See Adam Smith, *An Inquiry in the Nature and Causes of the Wealth of Nations: A Selected Edition* (OUP 2008). For further discussion of this, see chapter 3 below.

¹⁷ The terms 'global South' and 'global North' are preferred in this work to similar terms such as 'Developing' and 'Developed', 'Third World' and 'First World', 'Core' and 'Periphery', 'Non-Western' and 'Western', 'Minority World' and 'Majority World.' Without necessarily going into the connotations and historical implications that the use of these words provokes, global South, as used here, refers to the countries that are the focus of law and development policies, programmes and scholarship. In contrast, global North refers to countries from which most such policies and programmes emanate and which do not constitute the focus of law and development policies and programmes.

The origin of the terms 'global South' and 'global North' is attributed to the Brandt Report which was published by the Independent Commission on International Development Issues chaired by the former German Chancellor Willy Brandt. The report identified a North/South line dividing the world into richer industrial countries at the time and poorer countries. The line was located south of the latitude 30° North.

focus beyond just post-war reconstruction. The promotion of economic development in these newly independent countries became a major area of attention.¹⁸ The attainment of this objective required certain structural and institutional changes to be implemented in these countries. The legal system was considered an area of importance. The law and development movement became the vehicle through which legal reforms conducive to economic development were conceptualised and implemented.

In this work therefore, the movement refers generally to efforts of development agencies and initiatives to initiate and implement various legal and institutional reform projects in countries in the global South. On the other hand, the discourse on the subject - or what is otherwise referred to as law and development doctrine - is a reference to the body of knowledge that has informed the work of the movement over the years.¹⁹ This includes theoretical perspectives, empirical research, policy prescriptions and critical practice that have developed simultaneously with the history of the movement.

It is worth noting here the mutually dependent nature of the relationship between the movement and the discourse. As development agencies committed to pursuing development in the global South in the post-war era, they looked increasingly to

The preference for these terms in comparison to other terms is informed by the relative ideological neutrality of the terms in the context of development discourse. For more on the history and meaning of the various terms identified above and reasons supporting my preferences, see Thomas Hylland Eriksen, 'What's Wrong with the Global North and the Global South' (*Voices From around the World*, January 2015) <<http://gssc.uni-koeln.de/node/454>> accessed 20 April 2017; Jonathan Rigg, *An Everyday Geography of the Global South* (Routledge 2007) 2-5; Koen De Feyter, *World Development Law: Sharing Responsibility for Development* (Intersentia 2001) 17-20. Independent Commission on International Development Issues, *North-South: A Programme for Survival* (Pan Books 1980).

¹⁸ Heather Anne Marquette, 'The Origins and Development of the World Bank's Anti-Corruption Programme' (PhD Thesis, Durham University 2002) 32.

¹⁹ David M. Trubek and Alvaro Santos, 'Introduction: The Third Movement in Law and Development Theory and the Emergence of a New Critical Practice' in D. M. Trubek and A. Santos (eds) *The New Law and Economic Development: A Critical Appraisal* (CUP 2006) 1-18.

academia to provide guidance in the formulation and planning of development projects. The movement is the response from the legal field to this need. However, the development agencies also often recruited the personnel to man these projects from academia. This meant that the same group of persons involved in the discourse were engaged in the practical assistance projects of “legal development”.²⁰ This inevitably led to the fusion of the movement and the discourse and laid the foundation for the internal disenchantment in law and development aptly illustrated by the notorious self-critical article by Trubek and Galanter in 1974.²¹ This synthesis between the movement and the discourse is apparent in the discourse in this work.

In the years since its crystallisation, the movement has evolved through various phases and been applied for various purposes whilst retaining the fundamental objective of its evolution: the reform of legal systems in countries to promote development. There are three such discernible phases: The moment of the classic developmental state (from the late 1950s to 1970s), the moment of the neoliberal market (from the late 1970s to early 1990s) and the current moment of the new developmentalism (from the late 1990s to date).

As the timing identified for each moment demonstrates, determining the end of a specific moment and the commencement of another is not straightforward. The body of thought on the relationship between law and development and therefore the nature of legal reform efforts pursued by the movement continue to change. It is however the

²⁰ D.M. Trubek and M. Galanter, ‘Scholars in Self-Estrangement: Some Reflections on the Crisis in Law and Development Studies in the United States’ (1974) *Wisconsin Law Review*, 1062-1103, 1066.

²¹ *ibid.*

wide acceptance and comprehensiveness of an orthodoxy in the movement that provides the indication of the crystallisation of a particular moment.²²

In terms of what precipitates change in approach from one moment to another, two factors are broadly identifiable: the change in general development ideology and the practice of development agencies. These factors are however not necessarily disparate as development ideology and practice influence and is influenced by the policies of major development institutions. The law and development movement - basically a product of this interaction - has continued to provide the needed theoretical foundation and policy mechanism through which law facilitates the predominant development ideology and policies. This role of law has however changed with each moment.

A major identifiable change between the first and second moments of law and development on the one hand, and the third moment on the other, is the approach of the movement to the issue of corruption. Hitherto, law and development, reflecting broader ideologies and policies in the development field, dedicated negligible attention to the understanding of corruption, its impact on development and the design of policies and programmes to tackle corruption. The period since the late 1990s has however witnessed a substantial amount of research, policies and programmes on corruption and the broader issue of governance within which it is contained.²³ Taking this into consideration, law and development therefore provides the defining ideological background to the global anticorruption movement. This informs its choice as a theoretical framework in this work. After about two decades of intense attention

²² Trubek and Santos (n 10) 2.

²³ Maria Gonzalez de Asis, *Anticorruption Reform in Rule of Law Programs* (World Bank Institute 2006) 1-4.

to corruption, the ever-present strand of critical practice within the movement is beginning to question the ramifications of approach of the field to corruption for the development of countries in the global South.

Until now, research considering this issue within the movement has either considered the international component of it by looking at the policies and programmes of development agencies on corruption, or the national component by looking at local factors that inhibit the success of measures put in place to tackle corruption. This work takes the conversation further by considering the issue of corruption and particularly anticorruption measures in countries in SSA within the broader context of the law and development movement. It does so on the premise that a balanced comprehension of the issues surrounding the subject can best be gotten by looking at both the international and national - demand and supply - sides of the approach to corruption together, especially in terms of understanding the influence of the former on the latter.

1.6 Corruption and the Rise of “Anticorruptionism”

There is now a global consensus that corruption is one of the most potent obstacles to the development of countries in the global South. SSA is particularly considered vulnerable to the negative effects of corruption on its development. Since the latter end of the 1990s, development institutions, donor countries, and civil society alike

have directed their policies towards dealing with corruption within the wider framework of promoting good governance in countries in the region.

This however only tells the story of the last two decades. Prior to this, corruption had little or no place in development policy or programmes. In fact, systematic research on the effects of corruption on development only began to emerge in the 1990s. Whilst a few instances of such research preceded the marked attention to corruption in international development, the large proportion of research on the subject appears to have come alongside or after the swift attention to corruption by major development agencies, beginning with the change in policy at the World Bank.²⁴ This has created some sort of a 'cart-before-the-horse' situation where research has been pursued to justify the focus on corruption rather than the other way round - research informing the change in policy.²⁵

This was the case even though corruption has always been a constant factor in the economic, social and political history and reality of countries in SSA. This indifference somehow persisted despite overwhelming evidence in public purview of the existence of massive corruption especially amongst political elites in countries in the region.

In Nigeria for instance, there are records of widespread corruption since the time of its first post-independence democratic government. The officers who carried out the first military coup in the country on 15 January 1966 referred to corruption amongst political elites as the major reason for their actions.²⁶ Through the years, other clear-cut cases

²⁴ See Howard Stein, *Beyond the World Bank Agenda: An Institutional Approach to Development* (The University of Chicago Press 2008) 38-51.

²⁵ Moran Goodwin and Kate Rose-Sender, 'Linking Corruption and Human Rights: An Unwelcome Addition to the Development Discourse' in Martine Boersma and Hans Nelen (eds), *Corruption and Human Rights: Interdisciplinary Perspectives* (Intersentia 2010) 221-240.

²⁶ Olurungbemi Simeon Toyin, 'The Impact of Military Coup D'etat on Political Development in Nigeria' (2015) 6(10) Int'l Journal of Business and Social Science 194-202.

of corruption have also emerged with military and political leaders amassing mammoth amounts of wealth through corruption.²⁷ This notwithstanding, there was no policy or programme directed at addressing the manifest corruption from IDIs who were actively implementing various development programmes in cooperation with the government.

However, this all changed in the latter years of the 1990s with corruption becoming a major concern in the development field. At the Annual General Meeting of the World Bank in 1996, its President James D. Wolfesohn, in an epoch-making speech referred to the 'cancer of corruption' as a major barrier to sound and equitable development which had to be dealt with urgently.²⁸ By 1999, he went even further to assert that corruption is 'the largest single inhibitor of equitable economic development'.²⁹ The speech of Wolfesohn in 1996 was the culmination of a change in ideology at the bank towards dealing with corruption within the broader spectrum of governance reforms that began towards the end of the 1980s. In the period since, anticorruption efforts have become a significant pillar of development policy and discourse at the Bank and other development institutions.

This rather sudden heightened attention to corruption - referred to in this work as 'the rise of "anticorruptionism"' - was accepted with enthusiasm in the field of development at the international level and duly replicated in individual countries in SSA. Between 1996 and 2006 alone, no less than ten global and regional international instruments on corruption were adopted. At the same time research on corruption also flourished at unprecedented levels. These were often on the initiative of major development

²⁷ Details of these cases of corruption are discussed in detail below in sections 1.8 and 3.3.

²⁸ Ibrahim Shihata, 'Corruption – A General Review with an Emphasis on the Role of the World Bank' (1997) 15(3) Dickinson Journal of International Law 451-485.

²⁹ Tara Polzer, 'Corruption: Deconstructing the World Bank Discourse' (2001) Development Studies Institute Working Paper Series No. 01-18, 2
<<http://www.lse.ac.uk/internationalDevelopment/pdf/WP/WP18.pdf>> accessed 17 October 2016.

institutions like the World Bank and CSOs like Transparency International. In fact, research-based measurements of corruption in countries from both institutions played a major role in pressuring countries to act against corruption. The governance indicators of the World Bank and Transparency International's Corruption Perceptions Index became a major consideration for foreign investors, donor organisations and other stakeholders in the development sector in dealing with countries. This made it imperative for countries to be seen to be acting on corruption.

Thus, at the national level, countries started taking specific actions aimed at tackling corruption in line with the global drive. The passing of anticorruption legislation, establishment of anticorruption institutions and the initiation of public sector reforms were some of the main actions that were encouraged and pursued vigorously. In Nigeria, following the return to democratic rule in 1999, the first anticorruption institution, the ICPC was established with urgency the following year under the Corrupt Practices and Other Related Offences Act 2000. Since then, a considerable amount of anticorruption legislation, institutions and policies have been put in place.

The enthusiasm and momentum that greeted the rise of anticorruptionism in the law and development movement are not however reflected in the results achieved after two decades. Success stories have been few and far between with an apparent sense of disillusionment on the prospects of anticorruption efforts. This work looks to provide insights as to why this is the case.

1.7 Towards a Rights-Based Perspective

The penultimate chapter of this thesis examines the idea of a rights-based approach to anticorruption. This concept has evolved slowly within the law and development movement since the turn of the century, with action towards its implementation currently being considered by certain development institutions, led by the United Nations Human Rights Council. The concept arose as a reaction to some of the problems of current anticorruption efforts, including their top-down nature, lack of accountability to ordinary members of society and the lack of effective remedies for victims of corruption.

A rights-based approach, it is argued, will provide a bottom-up approach to anticorruption efforts built on the human rights principles of transparency, participation, accountability and the provision of effective remedies.³⁰ Other arguments include the stance that such integration would make available to anticorruption efforts the established monitoring and compliance mechanisms of the human rights systems of the United Nations and other human rights institutions. This is expected to put to rest some of the concerns of the current perception-based and ranking-based measurements of corruption that have been subjected to much criticism. However, at the foundation of the whole move towards a rights-based approach is the ineffectiveness of the current regime for anticorruption in countries.

³⁰ International Council on Human Rights Policy (ICHRP) and Transparency International (TI), *Integrating Human Rights in the Anti-Corruption Agenda: Challenges, Possibilities and Opportunities* (ICHRP, Switzerland 2010) 7-8.

This approach is therefore discussed in this thesis to provide a forward-looking component in the assessment of anticorruption efforts in countries in SSA. The foundations of this approach and current actions being taken within the law and development movement for its implementation are also discussed. This will allow for the assessment of the persistence or otherwise of the problems of the movement and their ramifications, not just for the past and present but also prospective anticorruption efforts. The consideration of this approach also provides a comprehensive and up-to-date assessment of anticorruption efforts in the region.

1.8 Nigeria as a Case Study

This section provides a background to Nigeria, the case study for this thesis. The objective is to highlight basic facts about the country in terms of its development indicators and history. Reference is also made to the incidence of corruption in the country and actions taken to tackle it. All this will be done vis-a-vis the law and development movement to demonstrate what informed the choice of the country as a case study for this thesis.

Nigeria is the most populous country in Africa with an estimated population of over 186 million people.³¹ It became an independent country, from British rule, on 1 October 1960. The country has had a turbulent political history with alternating

³¹ United Nations, 'World Statistics Pocketbook - Nigeria'
<<http://data.un.org/CountryProfile.aspx?crName=NIGERIA#Summary>> accessed 17 October 2016.

democratic and military regimes, although it has enjoyed stable democratic rule from 1999 until date.

Nigeria is blessed with a broad spectrum of natural resources including gold, coal, tin, iron ore, columbite, limestone and lead. But its most important resource is its rich oil wealth which is the central stay of the country's economy. Nigeria is the tenth most petroleum-rich country in the world and has the largest reserves of oil in Africa with an estimated 37 billion barrels in reserves.³² The value of its annual petroleum exports is put at over 40 billion dollars, accounting for 70 per cent of government revenue.³³ The country has the second largest economy in Africa with a GDP of just under 500 billion dollars, and for a couple of years following a rebasing exercise in 2014 was considered to have the largest economy on the continent.³⁴

Despite all its natural and human resources, the country continues to achieve below its potential in terms of development. The latest Human Development Index of the UN ranks Nigeria at 152 out of the 188 countries reported on.³⁵ A breakdown of this shows that the country scores below the global average on almost all the human development indicators: Life expectancy stands at 52.8 years and an estimated 62 per cent of the total population live below the poverty line. Perhaps graver is the fact that 76.6 per cent of the working population are also considered poor, living on less than 2 dollars per day.³⁶

³² OPEC, 'Nigeria Facts and Figures' <http://www.opec.org/opec_web/en/about_us/167.htm> accessed 17 October 2016.

³³ *ibid.*

³⁴ BBC News, 'Nigeria Becomes Africa's Biggest Economy' (6 April 2014) <<http://www.bbc.co.uk/news/business-26913497>> accessed 17 October 2016.

³⁵ UNDP, *Human Development Report* (UNDP, New York 2015) 47-50

³⁶ UNDP, 'Human Development Indicators 2015: Nigeria' <<http://hdr.undp.org/en/countries/profiles/NGA>> accessed 17 October 2016.

Other social and economic indicators that illustrate the development challenges of the country include its literacy rate that stands at a meagre 51 per cent. The picture within the education system does not look any better with primary schools having a pupils-per-teacher ratio of 37.6 to 1 and a dropout rate of 20.7 per cent. The country still deals with a high fatality rate for most curable diseases like malaria and tuberculosis and has an infant mortality rate that stands at a high 74.3 per 1.000 live births.³⁷ High levels of inequality, gender imbalance, lack of social and overall human security are some of the other issues that have bedevilled the country over the years.

The blame for the country's lack of development in the light of the resources available to it has often been put on widespread corruption. In the last couple of decades, especially since the global attention to corruption, other possible explanations like poor management, a weak democracy, conflict and unfavourable economic policies have all moved to the background. Corruption is now considered the prime factor responsible for the poverty and overall underdevelopment in the country. Several corruption events in the same timeframe attest to the nature and magnitude of the problem. Estimates indicate that the country lost more than 157 billion dollars in the past decade to illicit financial outflows alone.³⁸ Internally, various sources indicate that the country loses between 5 to 10 per cent of its annual budget to embezzlement and

³⁷ *ibid.*

³⁸ Global Financial Integrity, 'Data by Country: Average Annual Illicit Financial Outflows: 2004-2013' <<http://www.gfintegrity.org/issues/data-by-country/>> accessed 17 October 2016.

other forms of corrupt activity by public officials.³⁹ Past and current public officials help themselves to mammoth amounts of the public wealth of the country.⁴⁰

Unsurprisingly, the country performs poorly on most indices and surveys of corruption. Nigeria consistently scores below average on the control of corruption component of the World Bank's Worldwide Governance Indicators and on Transparency International's Corruption Perception Index. The latter's most recent index ranks Nigeria at 136 out of 176 countries with a score of 28 out of 100.⁴¹ A 2012 survey carried out by Transparency International showed that 84 per cent of Nigerians believed that corruption was on the increase,⁴² whilst other surveys indicate that Nigerians, like most people in SSA, considered corruption to be one of the most significant challenges to the development of the country.⁴³ Corruption has become a central issue of social and political concern. It was arguably the main determinant of the victory of the opposition party at the country's last general election in 2015.⁴⁴

³⁹ Transparency International, 'Transparency International Calls on the Nigerian Government to Step Up its Fight Against Corruption and Welcomes an Investigation into the Oil Sector' (27 February 2014) <http://www.transparency.org/news/pressrelease/transparency_international_calls_on_the_nigerian_government_to_step_up_its> accessed 17 October 2016.

⁴⁰ Particular cases in this regard are considered when the incidence of corruption in SSA is discussed below in section 2.4.

⁴¹ Transparency International, 'Corruption Perceptions Index 2016' <http://www.transparency.org/news/feature/corruption_perceptions_index_2016> accessed 20 April 2016.

⁴² Transparency International, 'Global Corruption Barometer 2013 - Nigeria' <<http://www.transparency.org/gcb2013/country/?country=nigeria>> accessed 17 October 2016.

⁴³ Maria Ramos, 'What's the Biggest Challenge for Africa in 2015?' (World Economic Forum Survey on the Global Agenda 2015 (9 November 2014) <<https://agenda.weforum.org/2014/11/whats-biggest-challenge-africa-2015/>> accessed 23 October 2015; CNN, 'Survey of Young Africans on the Challenges and Future of Africa' (CNN Inside Africa, 13 December 2013) <http://edition.cnn.com/2013/12/13/world/africa/africa-post-mandela-survey-jana/index.html?hpt=hp_c1> accessed 23 October 2015.

⁴⁴ See Max Sioillu, 'How Goodluck Jonathan Lost the Nigeria Election' *The Guardian* (London, 1 April 2015) <<https://www.theguardian.com/world/2015/apr/01/nigeria-election-goodluck-jonathan-lost>> accessed 26 April 2017; *The Economist*, 'Nigeria's Election: Three Cheers for Democracy' (4 April 2017) <<http://www.economist.com/news/leaders/21647616-muhammadu-buhari-was-least-bad-presidential-candidate-nigeria-may-he-rise-his>> accessed 26 April 2017.

Since the return of the country to democratic rule in 1999, successive governments have made tackling anticorruption a central policy objective. Whilst this may be considered a logical response to the challenge of corruption, there is another important factor worth considering. The timing of Nigeria's return to democracy in 1999 coincided with the change in policy in the development field, with an emphasis on dealing with corruption. The country responded accordingly to this heightened attention to corruption at the global level. Within a year of its return to democracy, it had passed the first anticorruption legislation, the Corrupt Practices and Other Related Offences Act of 2000 which established its first major anticorruption institution, the ICPC. Two years later, another anticorruption statute, the Financial Crimes Commission (Establishment) Act 2002 was passed establishing the country's foremost anticorruption institution, the Economic and Financial Crimes Commission (EFCC).

In the years since, the country has passed multiple anticorruption laws and established a considerable number of institutions intended to address corruption. Nigeria's current anticorruption regime is considered one of the most progressive in the SSA region, in theory. It also compares favourably with post-1990s anticorruption regimes elsewhere in the World. As the discourse in this work will show, the country has put in place a robust legal and institutional framework that accords with and reflects the rise of anticorruptionism at the global level. This is a factor that partly informs the choice of the country as a case study to illustrate within a context, the approach of the law and development movement to corruption.

Two other factors are also worth pointing out about the choice of Nigeria as a case study. The first is the mixed results of its anticorruption regime. Despite the relatively comprehensive and progressive nature of the anticorruption regime in the country, there are no clear signs of any significant reduction in the rate of corruption, or indeed

an improvement in development indicators because of gains from the supposed ‘fight against corruption’. Success stories of corrupt public officials or institutions being held accountable are few and often tainted by allegations of anticorruption efforts being motivated by political, ethnic and other considerations. This situation therefore provides a good background against which to ask the questions about the effectiveness of the current global anticorruption drive. The size of the country – especially in terms of its population – and the significance of the country, politically and economically in the SSA region, also makes it an apt choice as a case study of the region.

Secondly, the development history of the country provides an apposite country-level illustration of the work of the law and development movement through its various moments. Nigeria became an independent country in 1960 at about the same time as the crystallisation of law and development thought and projects. The country implemented most of the reforms proposed by the movement as the latter progressed through the phase of the classic developmental state to the phase to neoliberal policies, and onto the current moment of the new developmentalism. From its independence to the 1970s, the state played a principal role in the economic development of the country. Most sectors like education, health and even industry were state controlled. This period also saw the establishment of the state-owned oil company, the Nigerian National Petroleum Corporation (NNPC) in 1977.⁴⁵ All this was in accordance with the predominant theory of state-led development. With the change in ideology to neoliberal policies in the decade that followed, Nigeria was also one of the countries that implemented the Structural Adjustment Programmes of the IMF and

⁴⁵ NNPC, ‘History of the Nigerian Petroleum Industry’
<<http://nnpcgroup.com/nnpcbuisness/businessinformation/oilgasinnigeria/industryhistory.aspx>>
accessed 20 April 2017.

World in the 1980s.⁴⁶ The country has also implemented most of the current policy reformulations in the last couple of decades that followed the period of structural adjustment reforms in countries in the global South and SSA specifically. The emphasis on governance and anticorruption are arguably the most central elements of these policy formulations that continue to be pursued by the country.

It is these apparent and typical parallels that have informed the choice of Nigeria as a case study. By discussing the background, features, problems and prospects of anticorruption efforts in the country through the framework of the various moments of the law and development movement, this work highlights the dynamics, influence and problems of the approach of the movement in countries in SSA. As the effectiveness of the robust anticorruption regime in the country continues to be hampered by factors that are often considered distinctive to the social, economic and political milieu of Nigeria, the objective here is to contextualise these factors within the broader global law and development movement and especially the foundations of anticorruption reforms.

⁴⁶ See World Bank, *Nigeria: Structural Adjustment Program; Policies, Implementation and Impact* (World Bank, Washington, DC 1994).

2.0 Introduction

Corruption is considered the most serious challenge to development globally, but more so in countries in the global South. It is estimated that over one trillion dollars is paid in bribes alone around the world every year.¹ A study by Global Financial Integrity showed that countries in the global South lose close to that amount in illicit financial outflows annually, with countries in SSA estimated to be losing an average of 6.1 per cent of total GDP each year due to such outflows.² At a broader level, corruption distorts business activities, hampers the functioning of institutions, limits access to social services, and ultimately impacts negatively on development in all facets of society.

There has been long standing interest in this relationship between corruption and development. However, the last couple of decades has seen a heightening of this interest. This has led to multidisciplinary enquiry and policy-oriented studies that have informed anticorruption policy and programming from IDIs, CSOs and other stakeholders.

¹ Daniel Kaufmann, 'Myths and Realities of Governance and Corruption' in Global Competitiveness Report (World Economic Forum 2005-2006). For a discussion of the methodology in arriving at this figure, see Matthew Stephenson, 'The Source of the \$1 Trillion in Annual Bribes Figure' (The Global Anticorruption Blog, 24 April 2014) <<http://globalanticorruptionblog.com/2014/04/24/the-source-of-the-1-trillion-in-annual-bribes-figure/>> accessed 22 September 2014.

² Global Financial Integrity, 'Illicit Financial Flows from Developing Countries: 2004-2013' (Global Financial Integrity, December 2015) viii.

This chapter looks at the broad range of issues regarding corruption and its impact – including its conception, measurement, incidence and effect on development - with the objective of establishing the conceptual foundations of the study. The aim is to show the evolution and intricacies of the conceptual discourse on corruption and the relationship between this and the initiation and implementation of mechanisms to tackle it.

2.1 Conception of Corruption

Conceptualising corruption is a challenge that is as complex as the phenomenon itself. Corruption is used to refer to a wide range of activities including bribery, embezzlement, nepotism, fraud, favouritism and extortion. The word, in general usage, therefore carries a negative connotation. It is in this context that the Oxford Dictionary defines the adjective, 'corrupt' as 'having or showing a willingness to act dishonestly in return for money or personal gain'³. Derived from this, the noun form of the word 'corruption' is defined as 'dishonest or fraudulent conduct by those in power, typically involving bribery'⁴

This simple conception does not however grasp the complex practical issues that dealing with corruption entails. At a basic level, it does not answer the question of what actions amount to corruption and what actions do not in particular contexts? Is the determination of corrupt actions to be done by reference to law - in terms of legality and illegality - or by reference to morality or some other ethical or even cultural

³ Oxford Dictionary Online (2016) <<https://en.oxforddictionaries.com/definition/corrupt>> accessed 28 October 2016.

⁴ *ibid.*

standard? Answering these questions is particularly important with reference to anticorruption measures, which this work is concerned with.

The discussion that follows highlights a couple of factors in this respect. Firstly, it shows an apparent connection between the way corruption is defined and the conception of policies to deal with it. Hence, the approach of specific institutions and systems to dealing with corruption reflects how it is conceptualised by such institutions or systems. Secondly, the manner corruption is defined is often informed by a wide range of underlying socio-cultural, historical, ideological and politico-economic influences. The implication of this is that definitions of corruption need to be seen beyond their denotative conception, but rather as an exercise in post-structuralist thought where 'language and discourse are not seen as reflective of social reality, but constitutive of it'.⁵

At the inception of its anticorruption programme in 1997 the World Bank defined corruption as 'the abuse of public office for private gain'.⁶ This definition, with an apparent emphasis on public sector corruption was not novel. It echoed Rose-Ackerman's conception of corruption as illegal payments to a public agent to obtain a benefit that may or may not be deserved in the absence of payoffs.⁷ The World Bank's definition was also in accordance with the popular definition of corruption as 'the sale by government officials of government property for personal gain' by Shliefer and Vishny.⁸ It is however testament to the central role of the Bank in the initiation and promotion of the global anticorruption agenda that this particular definition of

⁵ Arturo Escobar, 'Anthropology and Development' (1997) 154 *International Social Science Journal* 497, 503.

⁶ World Bank, *Helping Countries Combat Corruption: The Role of the World Bank* (Washington DC 1997) 8.

⁷ Susan Rose-Akerman, *Corruption: A Study in Political Economy* (Academic Press Inc 1978) 6-7.

⁸ Andrei Shliefer and Robert W. Vishny, 'Corruption' (1993) *The Quarterly Journal of Economics* 599.

corruption is now widely accepted and adopted by most stakeholders. More importantly, this conception of corruption explains why the current anticorruption regime is mainly focused on the public sector.

This public-sector focus can be traced to the good governance foundations of the current anticorruption agenda. The World Bank's work on good governance which began in the 1980s was mainly a response to the failure of its Structural Adjustment Programme (SAP) in the global South. The SAP of the Bank and the IMF which emphasised neoliberal policies of privatisation, market economy and deregulation in the 1970s and 1980s failed to bring about expected economic development in the countries where they were implemented.⁹ This failure was imputed, not to the programmes themselves, but rather to poor governance in the countries which failed to provide the needed support for the success of the programme.¹⁰ In essence, the IFIs came to the conclusion that the failure of the SAPs was due to the failure of governance in the public sector. Hence, whilst retaining their faith in neoliberalism, good governance was introduced to bring about public-sector reforms that were needed to make the market policies effective.

As discussed in detail later in this work¹¹, owing to a range of factors including a management-driven attention to corruption within the Bank, anticorruption became a central element of the good governance agenda. It is therefore logical that the conception of corruption through this process had an apparent focus on the public sector. Anticorruption efforts were introduced to deal with corruption as a major

⁹ Dambisa Moyo, *Dead Aid: Why Aid is not Working and How There is Another Way for Africa* (Penguin Books 2009) 22.

¹⁰ Howard Stein, *Beyond the World Bank Agenda: An Institutional Approach to Development* (The University of Chicago Press 2008) 32-42.

¹¹ The origin and development of the World Bank's anticorruption agenda is discussed in detail in chapter 6, specifically section 6.1 below.

obstacle to development.¹² Since the blame for these obstacles had already been put squarely on the public sector, corruption was therefore defined in a manner that fitted this narrative and the founding objective of the anticorruption agenda; the improvement of governance in the public sector.

It is however noteworthy that this conception of corruption is different from that found in most instruments that constitute the international anticorruption regulatory framework. These instruments provide a broader notion of corruption that encompasses actions in both the public and private sectors. Even though they do not often provide a straightforward definition of corruption in recognition of the polyvalent nature of the term, the meaning attributed to the term can be gleaned from the overall provisions of the instruments. Thus, the United Nations Convention Against Corruption (UNCAC) states the meaning of acts of corruption like bribery, embezzlement, misappropriation of funds, trading in influence, and illicit enrichment by public officials,¹³ and also makes provision for acts of bribery and embezzlement in the private sector.¹⁴

This approach can also be found in the African Union (AU) Convention on Preventing and Combating Corruption. Article 2 of the Convention provides that 'corruption means the acts and practices including related offences proscribed in this Convention'. In listing the acts and practices of corruption within the scope of the Convention, Article 4 refers to offences like bribery, embezzlement, misappropriation and illicit enrichment in both the public and private sectors. Similarly, Article 6 of the Economic Community of West African States (ECOWAS) Protocol on the Fight Against Corruption defines

¹² World Bank (n 6) 1.

¹³ Articles 15 - 20 of UNCAC.

¹⁴ Articles 21 and 22 of UNCAC.

acts of corruption under the Protocol to include actions and omissions by persons in the public and private sector. The Southern Africa Development Community (SADC) Protocol Against Corruption, on its part, attempts a definition of corruption that appears more comprehensive than any of those already examined. In addition to a listing of acts of corruption in Article 3 that reflects the approach of the other instruments, the Protocol includes a definition of corruption as:

*. . . any act referred to in Article 3 and includes bribery or any other behaviour in relation to persons entrusted with responsibilities in the public and private sectors which violates their duties as public officials, private employees, independent agents and other relationships of that kind and aimed at obtaining undue advantage of any kind for themselves or others.*¹⁵

This broad conception of corruption can also be found in the Council of Europe's Civil Law Convention on Corruption.¹⁶ One clear exception to this appears to be the Inter-American Convention against Corruption which limits its definition of corruption to actions that take place in the public sector. Article VI of the Convention which lists the acts of corruption to which the Convention applies limits the actions to those carried out by a 'government official or a person who performs public functions'.¹⁷ It is worth noting however that there is a provision in Article VI which criminalises the actions of

¹⁵ Article 1 of the Southern Africa Development Community Protocol against Corruption. Even though the addition of "independent agents and other relationships" suggests an intention to extend the scope of the definition of corruption beyond just the public and private sectors, the practical effect of this may make little difference. Such independent agents and other relationships cannot be expected to operate in any sphere other than the public and private sectors.

¹⁶ See Article 2 of the Council of Europe Civil Law Convention on Corruption.

¹⁷ Inter-American Convention against Corruption (1996) 35 ILM 724.

conspirators, accomplices and instigators of the acts of corruption of public officials which may be interpreted to include private sector actors.

Despite this broad conception of corruption in international instruments, it is the definition of corruption as the abuse of public office for private gain championed by the World Bank that has obviously informed the anticorruption strategies and programmes of countries in SSA. The provisions of the first major anticorruption legislation in Nigeria, the Corrupt Practices and other Related Offences Act 2000, reflects this. Even though the Act defines corruption in neutral terms as including bribery, fraud and other related offences,¹⁸ it limits the duties of the anticorruption agency created under the Act to dealing with practices, systems and procedures of public bodies¹⁹ and only criminalises acts of corruption committed by any person 'in the discharge of his official duties or in relation to any matter connected with the functions, affairs or business of a Government department, or corporate body or other organisation or institution in which he is serving as an official.'²⁰

Most other laws that constitute the legislative framework for anticorruption in the country also show an apparent focus on corruption in the public sector. The Code of Conduct Act,²¹ the Fiscal Responsibility Act 2007, the Public Procurement Act 2007, and the Freedom of Information Act 2011 are all laws established to address corruption and entrench good governance with a specific focus on the public sector. It is also instructive that most of these laws were enacted in the aftermath of the heightened global attention to corruption. Even laws with a focus on acts of corruption

¹⁸ Section 2 of the Act.

¹⁹ Section 6 of the Act.

²⁰ Section 8 of the Act. Other offences under the Act are provided for from Section 9 - 26 of the Act and all make reference to corrupt activities undertaken by public officials or which take place in the public sector.

²¹ Cap C15, LFN 2004.

in the private sector like the Economic and Financial Crimes Commission (Establishment) Act 2004²² and the Money Laundering (Prohibition) Act 2011 have been implemented in a manner that evinces the public-sector focus of the overall anticorruption regime.

This overwhelming focus on the public sector in the conception of corruption at country level is understandable considering its origins go beyond the World Bank and includes other stakeholders. The IMF in its first major policy document on good governance in 1997 wholly adopted the World Bank's definition of corruption as the abuse of public office for private gain, to inform its assistance to countries in the area of governance.²³ On its part, USAID, whilst recognising the existence of corruption in the public and private sectors, nevertheless noted that its policy would be directed towards corruption in the public sector alone.²⁴ The reasons given for this include the Agency's belief that focusing on how the public sector manages its resources expands the impact of USAID programmes with regard to development.

Before concluding this section, it is worth noting that this work favours a comprehensive approach to the conception of corruption. It adopts the perspective of the international instruments examined above to the effect that the definition of corruption encompasses a wide range of actions that show abuse of power for private gain in both the public and private sectors. Hence, the definition provided by Transparency International which considers corruption as 'the abuse of entrusted

²² The Act established the Economic and Financial Crimes Commission (EFCC) after the ICPC to deal especially with private sector corruption which was not within the mandate of the ICPC. However, since its establishment to deal with economic and financial crimes in the country, the EFCC has gained more attention for its prosecution of public officials and less for dealing with economic and financial crimes that are rampant in the private sector.

²³ IMF, *Good Governance: The IMF's Role* (Washington D.C. 1997) 2.

²⁴ USAID, *USAID Anticorruption Strategy* (Washington, D.C. 2005) 8-9.

power for private gain'²⁵ is preferred. This is to the extent that the term 'entrusted power' is given the loosest possible meaning. There are instances where power is used or abused by persons to whom such power has not technically been formally 'entrusted'.²⁶ Actions taken in such situations would nonetheless amount to corruption. Whilst this may serve for the purpose of definition, it is important that within this broad framework, each country should be able to define, enforce and interpret actions that amount to corruption within their peculiar prevailing circumstances. And the laws, institutions, and other mechanisms put in place to address corruption should ideally reflect these differences.

2.2 Typology of Corruption

Generally, the following have been variously discussed as manifestations of corruption: bribery, favouritism and nepotism, embezzlement, fraud, extortion, illegal contribution and abuse of power, amongst others.²⁷ The list is broad and some actions may constitute corruption in certain countries and not in others, owing to legal and cultural differences. More so, a case of corruption might involve more than one activity

²⁵ Transparency International, *The Anti-Corruption Plain Language Guide* (TI 2009) 14.

²⁶ An example of this would be corruption perpetrated by military regimes that seize power through unconstitutional means.

²⁷ See Petter Langseth, 'Measuring Corruption' in Charles Sampford and Others, *Measuring Corruption* (Routledge 2016) 7-14; Alvaro Cuervo-Cazurra, 'Better the Devil You Don't Know: Types of Corruption and FDI in Transition Economies' (2008) 14 *Journal of International Management* 12-27; Pranab Bardhan, 'Corruption and Development: A Review of Issues' (1997) 35(3) *Journal of Economic Literature* 1320-1346; Joseph Nye, 'Corruption and Political Development: A Cost-Benefit Analysis' (1967) 2 *American Political Science Review* 419

and might also include other illegal activities, apart from corruption, to be successfully executed.²⁸

Corruption takes place in a wide range of ways in society and this has been discussed extensively in various texts.²⁹ As international and local anti-corruption measures have been strengthened over the years, individuals engaged in corruption have also engendered innovative ways to avoid detection and prosecution. The discussion that follows is a classification of acts of corruption based on a varying range of broad criteria with relevance to this work.

As discussed above, corruption may take place in the public or private sector. Corruption in the public sector may be classified according to the level at which it occurs and with reference to the position of individuals who engage in it. In this regard, Susan Rose-Ackerman suggests a distinction between Political Corruption and Bureaucratic Corruption.³⁰ Political corruption is that which is perpetrated by elected or appointed political officials who abuse public office and resources for their private gain. Bureaucratic corruption also involves the abuse of public office or authority for private gain, but is rather perpetrated by those who Rose-Ackerman refers to as low-level bureaucrats and civil servants.³¹ Owing to their positions as formulators of legislation and policies (as politicians) and implementers and administrators of government policies (as bureaucrats), both groups are afforded a wide range of authority and discretion in dealing with various entities in society, which may be

²⁸ For instance, a public official who engages in bribery might have to engage in corollary illegal actions like identity theft to hide the proceeds or escape prosecution.

²⁹ See for instance, Susan Rose-Ackerman, *Corruption and Government: Causes, Consequences and Reform* (CUP 1999); Robert Klitgaard, *Controlling Corruption* (University of California Press 1988); Susan Rose-Akerman, *Corruption: A Study in Political Economy* (Academic Press Inc 1978).

³⁰ Susan Rose-Ackerman, *Corruption: A Study in Political Economy* (ibid) 10.

³¹ ibid. See also Susan Rose-Ackerman, 'Political Corruption and Democratic Structure' in Arvind K. Jain (ed), *The Political Economy of Corruption* (Routledge 2001) 35-62.

subjected to abuse. This accords with Robert Klitgaard's formulation of corruption as monopoly plus discretion minus accountability (*Corruption = Monopoly + Discretion - Accountability*).³² Such acts may be committed before, during or even after leaving office. They range from bribery to favouritism, embezzlement, extortion and money laundering, amongst others.

Political corruption is often referred to as 'grand' corruption because of its potential to have a large-scale impact on society. This is especially so when carried out by top ranking officials in government, such as heads of state, ministers and federal legislators.³³ In contrast, bureaucratic corruption is used synonymously with 'petty' corruption.³⁴ This is however not an indication that its effect is always petty in contrast to grand corruption. In certain situations, corruption carried out by high-ranking bureaucrats in the public service like permanent secretaries in the Nigerian civil service for instance, may have as much or even more detrimental impact than political corruption.

A taxonomy of corruption akin to this is provided by the World Bank, based on the scale of the intended result of acts of corruption. The Bank contrasts 'State Capture' and Administrative Corruption.³⁵ State capture refers to situations where individuals or enterprises provide private gains to policy makers to secure informal and preferential access to government policy-making. Also referred to as 'regulatory

³² Robert Klitgaard, *Controlling Corruption* (n 28) 75. Klitgaard therefore argues that corruption flourishes when such public officials have monopoly power over clients, when they have great discretion and when their accountability is weak.

³³ USAID, *USAID Anticorruption Strategy* (Washington, D.C 2004) 8.

³⁴ Nsongurua J. Udombana, 'Fighting Corruption Seriously? Africa's Anti-Corruption Convention' (2003) 7 *Singapore Journal of International & Comparative Law* 447-488; Nihal Jayawickrama, 'A Holistic Approach to Combating Corruption' (199) 25(2) *Commonwealth Law Bulletin* 658-679.

³⁵ World Bank, *Anticorruption in Transition: A Contribution to the Policy Debate* (The World Bank, Washington, D. C 2000) 1.

capture',³⁶ the aim of individuals and organisations who engage in this manner of corruption is to influence the formulation of laws, regulations and policies in their favour. Administrative corruption on the other hand, refers to the provision of favours or private gains to public officials, but for purposes that are more specific and more limited than state capture. These include the exchange of bribes for the unlawful granting of contracts, permits, licences or state bank loans and the misdirection of public resources by state officials for their personal benefit.

Corruption can also be classified according to whether the public official engaged in it for economic gains or for non-economic gains. Corruption engaged in for economic gains could either be embezzlement or bribes. Whilst embezzlement involves the expropriation of public funds, bribes, on the other hand, involve the appropriation of funds from private individuals or organisations by the public official.³⁷ In the latter case, public officials may ask for and receive bribes in order to perform their duties or not to perform their duties, or to otherwise carry out some action by virtue of their office.³⁸ Furthermore, it is important to refer here to the work of Shleifer and Vishny which draws a distinction between corruption 'with theft' and corruption 'without theft'.³⁹ Corruption with theft occurs where the official, in collecting bribes, does not turn over the official price of the public good or service provided to the government.

³⁶ Joel S. Hellman and others, 'Measuring Governance, Corruption, and State Capture: How Firms and Bureaucrats Shape the Business Environment in Transition Economies' (2000) World Bank Policy Research Working Paper 2312, 1-5.

³⁷ Michael J. Trebilcock and Marianna M. Prado, *What Makes Poor Countries Poor: Institutional Determinants of Development* (Edward Elgar Publishing Ltd 2011) 176-178.

³⁸ In this regard, it is worth noting the International Council on Human Rights Policy's definition of corruption as 'the promise, offering, or giving, to a public official, or the solicitation or acceptance by a public official, directly or indirectly, of an undue advantage, for the official himself or another person or entity, in order that the official act or refrain from acting in the exercise of his official duties.' See International Council on Human Rights Policy and Transparency International, *Corruption and Human Rights* (ICHRP, Switzerland 2009) 19.

³⁹ Shleifer and Vishny (n 8) 601-602.

Corruption 'without theft' on the other hand, occurs where the official turns over the official price to the government whilst retaining the extra, the bribe.⁴⁰

Corruption involving non-economic gains refers to situations where the public official confers benefits on individuals or groups through the use of his position or influence or the manipulation of political processes, in order to generate political support or some other benefit for himself.⁴¹ The most popular forms of such corruption include clientelism, patronage and nepotism, where public office is used to provide benefits and privileges for persons who are affiliated to the public official personally, ethnically, politically or otherwise. This can also be considered a type of 'political corruption' in the context that the ill-gotten gains often benefit the public official in his official capacity.⁴²

In terms of a categorisation of corruption which seeks to explain its prevalence and perseverance, corruption may be classified as being Individualistic or Systemic.⁴³ The former refers to a purely opportunistic kind of corruption which is perpetrated by a few incongruous individuals, often in a society that is largely 'clean' in terms of corruption. On the other hand, Systemic corruption refers to situations where corruption manifests in an organised manner in society and therefore permeates various facets of such society through intricate and widespread networks. In general terms, individualistic or what the World Bank refers to as isolated corruption⁴⁴ can rarely be considered pervasive in society as corruption is considered an anomaly which can be dealt with

⁴⁰ *ibid.*

⁴¹ Trebilcock and Prado (n 37) 177.

⁴² Mark Philip, 'Conceptualising Political Corruption' in Arnold J. Heidenheimer and Michael Johnston (eds), *Political Corruption: Concepts and Contexts* (3rd edn, Transaction Publishers 2002) 41-58.

⁴³ USAID (n 33) 8.

⁴⁴ World Bank, *Helping Countries Combat Corruption: The Role of the Bank* (Washington, D.C 1997) 10.

on a case by case basis. In contrast, systemic corruption, as the name suggests, is often widespread and pervasive.

The discussion thus far has looked at corruption in the public sector. But corruption also takes place in the private sector and can take various forms, including bribery and fraud. The potential impact of this can be devastating for economic development in a country through the distortion of economic trends. It can also undermine foreign investment and make a country vulnerable to financial crisis and engender macroeconomic instability.⁴⁵ Furthermore, private sector corruption can lead to discrimination against individuals and groups in society leading to human right violations, and impeding human development.

This notwithstanding, public sector corruption continues to be the major focus of anticorruption efforts for reasons already examined. Other explanations for this trend include the fact that public sector corruption is considered a more serious problem in countries in SSA. Controlling public sector corruption is also considered a prerequisite for dealing with corruption in the private sector.⁴⁶

In his work on the typology of corruption, Michael Johnson notes that countries experience corruption differently. He therefore recommends that the type of corruption prevalent in a country should be taken into consideration in designing and implementing anticorruption programmes, stating: 'corruption problems require responses appropriate to their histories, realities and prospects.'⁴⁷ This reasoning can also be found in USAID's anticorruption strategy. Whilst discussing types of corruption

⁴⁵ ibid 11.

⁴⁶ ibid.

⁴⁷ Michael Johnson, *Corruption, Contention and Reform: The Power of Deep Democratisation* (CUP 2014) 16.

within the broad categories of Grand and Administrative Corruption, the strategy stipulates different programmatic responses to each type of corruption.⁴⁸ It goes further to state how the policy of USAID is directed more at dealing with administrative and grand corruption in the public sector vis-à-vis private sector corruption. On its part, even though the World Bank recognised the difference in manifestations of corruption and categorised them into bribery, theft, political and bureaucratic corruption and isolated and systemic corruption, it adopts a different strategy in terms of its response.⁴⁹ The Bank's anticorruption policy reveals a general response to dealing with public sector corruption, rather than prescribing particular actions with respect to different types of corruption in the public sector.

The ramifications of this for anticorruption efforts in SSA are considered later in this work.⁵⁰ It suffices to state however that, even if the Bank and other stakeholders considered the typology of corruption in countries in formulating anticorruption policies, the results would hardly be any different. This is because, as demonstrated by the case of the World Bank and USAID, the anticorruption policies of each institution are informed by their ideology, the legal qualifications of their establishment and what furthers their strategic interests. The realities in each country based on the prevalent type of corruption feature little in the process. And even if they did, it is inconceivable to see how each of these large IDIs would be able to distinctly adapt to such realities. This is especially so where the realities conflict with the legal and ideological assumptions and agenda of the IDIs. The result of this is therefore the current situation where there are very broad generic anticorruption regimes in countries with components dealing with everything - institutions, legislation, advocacy

⁴⁸ USAID (n 33) 19-20.

⁴⁹ World Bank (44) 9-11.

⁵⁰ This issue is discussed in depth in section 6.2.1 of chapter six.

judiciary etc. - and conveniently contained under the umbrella of good governance. The supply-side-driven nature of current anticorruption regimes in countries mean that such regimes have no chance of being responsive to the nature and types of corruption prevalent in a country. On the contrary, as current efforts continue to bear negligible results, anticorruption programmes have the potential of expanding even more in a bid to be more comprehensive, instead of being tailored narrowly to the contextual realities of each country.

2.3 Measuring Corruption

The imperative for clandestinity in corrupt practices is an apparent and often cited challenge to measuring its occurrence.⁵¹ This has however not prevented large-scale measurements of corruption in the last couple of decades. The advent of the systematic measurement of corruption has taken place alongside the rise of anticorruptionism, with such measurement seen as an integral part of the process of understanding the nature and effect of corruption. This is, in turn, expected to identify those responsible for corruption and assist in designing appropriate anticorruption strategies.⁵² However, whilst the measurement of corruption has had an undeniable

⁵¹ See Gauthier De Beco, 'Monitoring Corruption from a Human Rights Perspective (2011) 15(7) The International Journal of Human Rights 1108-1124; Global Integrity and UNDP, *A User's Guide to Measuring Corruption* (Oslo, Norway 2008) 8-9.

⁵² De Beco (ibid) 1109.

effect in bringing the issue of corruption to the forefront of international development discourse and practice, its impact on enhancing anticorruption efforts is debated.

Over the years, various organisations have developed tools to measure levels of corruption in countries. These assessments are however relatively recent having started around the 1980s and picked up pace in the decade after. Hence, there is also the constraint in research of being unable to analyse the evolution of corruption over longer periods of time.⁵³

The nature of corruption as an activity that requires secrecy to be successful has meant that its measurement necessarily includes elaborate constructions that are subject to complex and often subjective inputs.⁵⁴ Kaufmann, Kraay and Mastruzzi observe that, against myths held by some that corruption cannot be measured due to these apparent challenges, corruption can be and is currently being measured through one of the following three methods: (1) Perceptions of individuals and stakeholders; (2) Using institutional profiles in areas such as budget management or procurement practices as a proxy for corruption, and (3) Auditing particular projects as a sample of national practices.⁵⁵ They however note that none of these measures can actually be relied on as direct measures of corruption and that the most direct indicators of corruption being relied on are surveys that gather information on the real experiences of businesses and individuals of corruption, especially in the area of paying bribes.⁵⁶

⁵³ Trebilcock and Prado (n 37) 178.

⁵⁴ Francisco-Javier Urra, 'Assessing Corruption - An Analytical Review of Corruption Measurement and its Problems: Perception, Error and Utility' (2007) Edmund A. Walsh School of Public Service, Georgetown Washington 2.

⁵⁵ Daniel Kaufmann, Aart Kraay and Massimo Mastruzzi, 'Measuring Corruption: Myths and Realities' (World Bank, April 2007) 1-5.

⁵⁶ *ibid.*

More recent efforts at measuring corruption have seen the rise of ‘aggregate indicators’ that provide average measures of corruption. This is done by combining several primary assessments by different research groups who measure the perceptions of corruption in varying sectors of a country. Some of these aggregate or ‘second generation’ indicators⁵⁷ include the Business Environment and Enterprise Performance Survey⁵⁸, the World Governance Indicators (WGI) by the World Bank⁵⁹ and Transparency International’s Corruption Perception Index (CPI).⁶⁰ Kaufmann and Kraay identify the following as the main advantages of aggregate indicators of corruption in comparison to individual indicators: (1) they allow for a broader country coverage; (2) they provide a useful and functional summary of a wide range of individual indicators; (3) they reduce measurement errors and the influence of individual biases by averaging out the idiosyncrasies of the data sources used; and (4) they allow for the calculation of explicit margins of error.⁶¹

⁵⁷ Michael Johnson, ‘Measuring the New Corruption Rankings: Implications for Analysis and Reform’ in Arnold. J. Heidenheimer and Michael Johnson (eds), *Political Corruption: Concepts and Context* (Transaction Publishers 2001) 865-884.

⁵⁸ The Business Environment and Enterprise Survey is an initiative of the World Bank and the European Bank for Reconstruction and Development which examines the quality of business environment in countries by providing firm-level data on a wide range of issues including relations between business and government, firm financing, labour, infrastructure and corruption. See World Bank, ‘Business Environment and Enterprise Survey’ <<http://data.worldbank.org/data-catalog/BEEPS>> accessed 27 April 2017.

⁵⁹ The Worldwide Governance Indicators is a long-standing research project of the World Bank which provides cross-country indicators of governance for over 200 countries annually. Commenced in 1996, it consists of six composite indicators of broad dimensions of governance, including voice and accountability, political stability and absence of violence/terrorism, government effectiveness, regulatory quality, rule of law and control of corruption. See Daniel Kaufmann, Aart Kraay and Massimo Mastruzzi, ‘The Worldwide Governance Indicators: Methodology and Analytical Issues’ (2010) *Global Economy and Development* at Brookings 1-5.

⁶⁰ The Corruption Perceptions Index - published since 1995 - ranks countries annually by their perceived levels of corruption as determined by opinion surveys and expert assessments. Its publication is considered to have played a significant role in putting the issue of corruption on the global development agenda. See Transparency International, ‘Corruption Perceptions Index: Overview’ <<http://www.transparency.org/research/cpi/overview>> accessed 27 April 2017.

⁶¹ Daniel Kaufmann and Aart Kraay, ‘On Measuring Governance: Framing Issues for Debate’ (World Bank Institute and the Development Economics Vice-Presidency of the World Bank, Issues Paper for January 11th, 2007 Roundtable on Measuring Governance 2007) 3-4.

This notwithstanding, aggregate indicators are also being subjected to some criticism. Understanding and analysing the process behind the summary statistics provided by aggregate indicators proves particularly difficult for those without in-depth knowledge of statistical analysis. Even those with such knowledge find it daunting. This is corollary to the second criticism which relates to the utility of such indicators for purposes of reform. As Kaufmann and Kraay admit, it is difficult to ascertain how progress measuring corruption in individual sectors of a country and grasped by one source for instance, affects the overall score or ranking of a country on an aggregate indicator.⁶² There is of course the oft-cited problem of the unreliability of perception-based measurements of corruption, aggregate or otherwise. Studies based on survey evidence of real experiences of people have shown that perceptions do overestimate local experiences of corruption.⁶³

Despite these critiques, there are some who rationalise the use of perceptions for measuring corruption. They argue that no measure of corruption can be a 100 per cent reliable yardstick of the occurrence of corruption. Even the use of real data would yet be subject to imprecision and statistical measurement errors, between for instance, actual corruption and indicator reading.⁶⁴ Arguments such as this and the relative advantages of using aggregate indicators stated above have almost led to a certain

⁶² *ibid* 4.

⁶³ Mireille Razafindrakoto and François Roubaud, 'How Far Can We Trust Expert Opinions on Corruption? An Experiment based on Surveys in Francophone Africa', in Transparency International, *Global Corruption Report 2005* (Pluto Press 2005) 292-295.

It is worth noting that there are also studies that show corruption perceptions can be a good proxy for real corruption and that in some cases, there is a reasonably strong correlation between perception-based indices like the CPI and more objective measures of corruption. See Jason M. DeBacker, Bradley T. Heim and Anh Tran, 'Importing Corruption Culture From Overseas: Evidence From Corporate Tax Evasion in the United States' (2015) 117(1) *Journal of Financial Economics* 1222-138; Benjamin A. Olken, 'Corruption Perceptions vs. Corruption Reality' (2009) 93(7-8) *Journal of Public Economics* 950-964; Raymond Fisman and Edward Miguel, 'Corruption, Norms, and Legal Enforcement: Evidence From Diplomatic Parking Tickets' (2007) 115(6) *Journal of Political Economy* 1020-1048.

⁶⁴ See Kaufmann and Kraay, 'On Measuring Governance: Framing Issues for Debate' (n 61) 1; Urra (n 53) 7.

degree of acceptance of perception-based measurement of corruption. Urra however warns that the necessity to rely on subjective perception-based measurement of corruption due to the lack of better alternatives should not lead to an implicit acceptance of such indicators as standard practice.⁶⁵ This may detract from efforts to continually work towards arriving at more objective and real measurements of corruption in the long run.

Specifically, the most widely accepted and utilised of the aggregate indicators, the CPI, has often been criticised for its overwhelming use of expert assessments by elite business panels and professionals, with an inadequate representation of perceptions of local households and little businesses.⁶⁶ For instance, of the thirteen data sources used to construct its latest 2016 CPI, only one - the World Justice Project Rule of Law Index - directly includes a poll of the general public.⁶⁷ This demonstrates an obvious imbalance in the perceptions that comprise the index which favours the formal sector and businesses over the experiences of the poor in society and the informal sector. The above notwithstanding, the CPI is the most comprehensive index yet which measures corruption in the public sector globally. The fact that its data is sourced from about thirteen different organisations accessing corruption in various parts of the world and from different perspectives avoids, to a large extent, the biases that plague individual indicators of corruption.

In recent times, research in this area has tilted towards survey-based measures such as the World Bank's Business Environment and Enterprise Performance Survey

⁶⁵ Urra (n 54) 6. See also Marianne Bertrand and Sendhil Mullainathan, 'Do People Mean What They Say? Implications for Subjective Survey Data' (2001) 91(2) American Economic Review 67-72.

⁶⁶ Andrew Williams and Abu Sadique, 'The Use and Abuse of Governance Indicators' (2008) 9 Economics of Governance 131, 144.

⁶⁷ For an explanation of the data sources, see Transparency International, Corruption Perceptions Index 2016 < https://www.transparency.org/news/feature/corruption_perceptions_index_2016#resources > accessed 4 August 2017.

(BEEPS) and the International Crime Victims Surveys (ICVS). These surveys have however, also had to deal with the challenge of eliciting truthful responses. This is especially the case in answers to questions like whether respondents have requested or paid bribes. Another alternative involving the use of administrative data to measure corruption has not fared any better, with gaps appearing in such data, often caused by dysfunctional government bookkeeping.⁶⁸ The task of getting reliable data on corruption is therefore one that will always remain. It has to do more with the nature of the activity that is being measured than with the merits of the tools used for measurement. The difficulty associated with measuring a venture that is both secret and illegal cannot be easily overcome.

More importantly for this work, determining the usefulness of corruption measures for anticorruption efforts is a question that continues to engender variegated responses. Ideally, the measurement of corruption is expected to enhance anticorruption efforts. This should be achieved by drawing attention to the problem, showing the nature and trends in its occurrence, encouraging governments to act against corruption and mobilising public support. According to Global Integrity and UNDP's *User's Guide to Measuring Corruption*, '[T]here is little value in a measurement if it does not tell us what needs to be fixed.'⁶⁹ To an extent, this objective has been achieved but only in a general and preliminary sense. Having drawn attention to the incidence of corruption and the need to act, measures of corruption need to be sufficiently detailed and identify

⁶⁸ Sandra Sequeira, 'Advances in Measuring Corruption in the Field' in Danila Serra and Leonard Wantchekon (eds), *New Advances in Experimental Research on Corruption (Research in Experimental Economics, Vol. 15)* (Emerald Group Publishing Limited 2012) 145-175.

⁶⁹ Global Integrity and UNDP (n 51) 3.

key problems and priorities to prove useful in anticorruption efforts. It is in this area that the measurement of corruption has failed to meet expectations.⁷⁰

The result is a growing call amongst practitioners for actionable data, especially in the form of disaggregated indicators, to guide policy decisions.⁷¹ The statistical and composite nature of current measures of corruption makes them devoid of requisite focused and easily understandable information that would provide insights for anticorruption efforts. They also fail to reveal the nature and extent to which corruption occurs in particular situations or the impact it has on development in different sectors. This therefore limits their value for anticorruption efforts. On the contrary, they serve to pressure states, sometimes unduly, on the urgency of acting generally against corruption with no specifics on how to achieve this.⁷² In the same vein, they have the potential to leave anticorruption practitioners embarrassed and helpless, whilst providing little assistance.

Despite the limitations, it is safe to assume that current measures of corruption like the CPI and WGI will remain predominant for the foreseeable future. Pressure from academia and practitioners might lead to the development of more actionable indicators of corruption that would prove useful for anticorruption efforts. But these would hardly supplant or gain as much popularity or acceptance as the current statistical aggregate indicators. This is because, despite all the criticisms over time, these indicators have remained prevalent due to their usefulness to economic and political actors. The CPI and WGI constitute an integral component of the factors considered by corporations and other stakeholders when making investment

⁷⁰ Urra (n 54) 8.

⁷¹ Global Integrity and UNDP (n 51) 35.

⁷² De Beco (n 51) 1110.

decisions.⁷³ The statistical nature of the indicators makes them particularly apposite for such economic decision-making. Also, bilateral and multilateral donor organisations use these indicators in making lending and assistance decisions.⁷⁴ The fact that these indicators are both sophisticated in process and overtly simplistic in output at the same time serves these purposes well. It saves such corporations and organisations money, time and effort that would otherwise be spent in carrying out risk analysis and research on corruption on the ground before making the required decisions. Hence, irrespective of all their pitfalls, these indicators have continued to thrive. It demonstrates how subservient their apparent lack of utility for national anticorruption efforts is to the broader international economic and political interests which they serve appositely.

Furthermore, these indicators have also thrived due to the relationship between them and the anticorruption agenda. Systematic and institutional measurement of corruption began around the same time as the World Bank and other development institutions turned to anticorruption in the 1990s.⁷⁵ The fact that both issues developed simultaneously meant that the indicators of corruption did not necessarily precede and therefore precipitate the rise of anticorruptionism. It was not the case that the measurement of corruption led to a better understanding of its nature and effect, which in turn gave rise to a focus on anticorruption in the development field. Instead, the measurement of corruption can best be understood as having arisen alongside anticorruptionism, to justify an agenda that had its origins rooted elsewhere.⁷⁶ The

⁷³ Omar E. Hawthorne, *Do International Corruption Metrics Matter: The Impact of Transparency International's Corruption Perceptions Index* (Lexington Books 2015) 77-96.

⁷⁴ World Bank, *Implementation Plan for Strengthening World Bank Group Engagement on Governance and Anticorruption* (Washington, D.C 2007) 21-22

⁷⁵ Hence, as discussed above, the CPI got published for the first time in 1995 and the WGI in 1996.

⁷⁶ Tara Polzer, 'Corruption: Deconstructing the World Bank Discourse' (2001) Development Studies Institute Working Paper 01-18, 10 <<http://www.lse.ac.uk/internationalDevelopment/pdf/WP/WP18.pdf>>

World Bank for instance, only started systematic research into corruption years after the introduction of governance into its development agenda.⁷⁷ The first of its WGI was released in 1996, the same year identified as marking the threshold of its anticorruption programme. Hence, as well as drawing global attention to the issue of corruption, these indicators have served as justification for the concerted good governance and anticorruption programmes of IDIs.⁷⁸ By drawing attention to the poor scores and rankings of countries, especially in the global South, these indicators have succeeded in pressuring governments on the urgency of addressing corruption. In so doing, they simultaneously fuel the demand for assistance in the area of anticorruption, which is then supplied by the various IDIs and civil society.⁷⁹ This self-fulfilling circle has been sustained over the last couple of decades and will most probably continue to be.

2.4 Incidence of Corruption in Sub-Saharan Africa

Corruption is pervasive and detrimental to development globally. Although it is considered especially prevalent in SSA, it is not worse in aggregate terms than corruption in many other parts of the world. In terms of scale, the sums of money involved in cases of corruption in the region are modest when compared to scandals

accessed 1 February 2017). The background to the governance and anticorruption agenda is discussed in detail in section 6.1 of chapter 6.

⁷⁷ Alvaro Santos, 'The World Bank's Uses of the "The Rule of Law" Promise in Economic Development' in David. M. Trubek and Alvaro Santos (eds), *The New Law and Economic Development: A Critical Appraisal* (CUP 2006) 273 - 275

⁷⁸ Morag Goodwin and Kate Rose-Sender, 'Linking Corruption and Human Rights: An Unwelcome Addition to the Development Discourse' in Martin Boersma and Hans Nelen (eds) *Corruption and Human Rights: Interdisciplinary Perspectives* (Intersentia 2010) 221, 226.

⁷⁹ Santos (76) 274.

of corruption that take place in countries in the global North like the United States, Italy, and the United Kingdom.⁸⁰ The major difference appears to be that the developmental consequences of corruption in the region are far worse and more obvious due to its level of development.⁸¹

The problem is however serious and available statistics show the gravity of corruption in SSA. Estimates indicate that the cost of corruption in the region is roughly between \$120 and \$150 billion annually. This is significant when one considers that the total amount of money given in aid to countries in the region in the same timeframe stood at just about \$22.5 billion.⁸² Current research indicates that corruption is on the increase in the region. A 2015 Transparency International study found that people living in Ghana and Nigeria considered corruption to have increased 76 and 75 per cent respectively in the twelve months covered by the study. For South Africa, the figure was 83 per cent.⁸³ It is therefore not surprising that a high percentage of people in the region consider their governments to be doing very badly in tackling corruption. Over 70 per cent of people hold this view in countries like Madagascar, Liberia, Zimbabwe, Benin, South Africa, Nigeria, Mauritius and Ghana.⁸⁴

Transparency International's CPI indicates that about half of the bottom fifty countries on the index are from SSA.⁸⁵ In fact only five countries in the region - Namibia,

⁸⁰ Morris Szeftel, 'Clientelism, Corruption and Catastrophe' (2000) 85 *Review of African Political Economy* 427-441.

⁸¹ *ibid.*

⁸² Stephanie Hanson, 'Corruption in Sub-Saharan Africa' (*Council on Foreign Relations* 6 August 2009) <<http://www.cfr.org/africa-sub-saharan/corruption-sub-saharan-africa/p19984>> accessed 27 August 2014.

⁸³ Transparency International and AfroBarometer. 'People and Corruption: Africa Survey 2015' (Transparency International 2015) 6.

⁸⁴ *ibid.*

⁸⁵ Transparency International, 'Corruption Perceptions Index 2016' <http://www.transparency.org/news/feature/corruption_perceptions_index_2016> accessed 20 April 2016.

Mauritius, Rwanda, Cape Verde, and Botswana - scored above average (50 out of 100) in the organisation's annual indicator of perceived level of public sector corruption.⁸⁶ Notably, over 90 per cent of countries in the region continue to score below average on the CPI.

The perception of corruption in Nigeria has always been in the lowest 30 per cent in terms of its score on the CPI from 1995 until date. For 2016, the country is ranked 136 out of the 176 countries on the index with a score of 28 out of a possible 100.⁸⁷ Beyond these statistics, the country is estimated to lose nearly 40 per cent of its natural wealth to corruption or corruption-related mismanagement.⁸⁸ In fact, Transparency International's Global Corruption Barometer indicates that things are getting worse.⁸⁹ A number of corrupt events attest to the nature and magnitude of the problem. The country lost more than 157 billion dollars in the past decade to illicit financial outflows alone.⁹⁰ Furthermore, the country loses between 5 to 10 per cent of its annual budget to embezzlement and other forms of corrupt activity by public officials.⁹¹ Past and current public officials help themselves to mammoth amounts of the public wealth of the country.

⁸⁶ This is a trend that has persisted since Transparency International started measuring corruption in the 1990s. However, it is worth noting that, in using the CPI as an indicator of the level of corruption in a country, it is best to refer to the score of the country, instead of its ranking. This is because a country's rank indicates its position in relation to other countries. The implication of this is that the improvement or otherwise of the ranking of a country in a specific year is dependent on the performance of other countries in that year, as much as on the performance of the country itself.

⁸⁷ *ibid.*

⁸⁸ Amanda Wheat, 'West Africa: The BP Oil Spill Spells Disaster for Region' *MediaGlobal* (18 June 2010) <<http://allafrica.com/stories/201006200023.html>> accessed 27 October 2014.

⁸⁹ Transparency International, *Global Corruption Barometer 2013*. <<http://www.transparency.org/gcb2013/report>> accessed 27 October 2014.

⁹⁰ Global Financial Integrity, 'Data by Country: Average Annual Illicit Financial Outflows: 2004-2013' <<http://www.gfintegrity.org/issues/data-by-country/>> accessed 17 October 2016.

⁹¹ Transparency International, 'Transparency International Calls on the Nigerian Government to Step Up its Fight Against Corruption and Welcomes an Investigation into the Oil Sector' (27 February 2014) <http://www.transparency.org/news/pressrelease/transparency_international_calls_on_the_nigerian_government_to_step_up_its> accessed 17 October 2016.

For instance, a former military leader, Gen Sani Abacha who ruled the country from 1993 until his death in 1998 is estimated to have embezzled up to 5 billion dollars whilst in office.⁹² In recent times, a whopping sum of 20 billion dollars is alleged to have disappeared from the state-owned oil company, the Nigerian National Petroleum Corporation in 2014 with no one being held to account for the said sums.⁹³ And in 2015, the immediate past National Security Adviser of the country, Sambo Dasuki was arrested for the alleged misappropriation of over 2 billion dollars meant for the procurement of arms for the country's military.⁹⁴

Against this background, it is therefore not surprising to find the grave way corruption in SSA has been described. Andreski, for instance posits that 'it lies in the nature of graft that we cannot have statistics which indicate its extent but there can be no doubt that in all African states, the wealth acquired through illegal use of public office looms large'.⁹⁵

In his introductory notes to a recent study by the organisation of corruption in Africa, José Ugaz, the Chair of Transparency International remarked that:

*Corruption creates and increases poverty and exclusion. While corrupt individuals with political power enjoy a lavish life, millions of Africans are deprived of their basic needs like food, health, education, housing, access to clean water and sanitation.*⁹⁶

⁹² David Enweremadu, 'Nigeria's Quest to Recover Looted Assets: The Abacha Affair' (2013) 2 African Spectrum 51-70.

⁹³ Transparency International (n 91).

⁹⁴ BBC News, 'Nigeria's Dasuki "Arrested Over \$2bn Arms Fraud"' (London, 1 December 2015) <<http://www.bbc.co.uk/news/world-africa-34973872>> accessed 17 October 2016.

⁹⁵ Stanislaw Andreski, *The African Predicament: A Study in the Pathology of Modernisation* (Michael Joseph 1968) 93.

⁹⁶ Afrobarometer and Transparency International, *People and Corruption: Africa Survey 2015* (Transparency International, Berlin 2015) 21-24.

During his recent speech to the African Union in Addis Ababa, President Barack Obama of the United States referred to the challenge of corruption in Africa in the following terms:

*Nothing will unlock Africa's economic potential more than ending the cancer of corruption. . . . Here in Africa, corruption drains billions and billions of dollars from economies that can't afford to lose billions of dollars - that's money that could be used to create jobs and build hospitals and schools.*⁹⁷

On its part, the World Bank in its 2010 Africa Development Indicators described the nature of corruption in the region as follows:

*Corruption is embedded in the political economy of Africa. A number of studies describe the interaction between various forms of corruption and how it is intrinsically linked to the way power is exercised.*⁹⁸

Corruption is therefore considered the most serious challenge to development in the region. This is a position that informs the policy of most IDIs in dealing with countries in the region in the last couple of decades. It is one that also now plays a predominant role in social and political discourses and events. This is a situation that however requires caution. Without denying the high incidence of corruption in countries in SSA, Morris Szeftel reckons that statements like the above 'both exaggerate and underestimate the importance of corruption' in the region at the same time:⁹⁹

⁹⁷ The White House, 'Remarks of President Obama to the People of Africa' (Mandela Hall, Africa Union Headquarters, Addis Ababa, Ethiopia 28 July 2015) <<https://www.whitehouse.gov/the-press-office/2015/07/28/remarks-president-obama-people-africa>> accessed 8 November 2016.

⁹⁸ World Bank, *Africa Development Indicators 2010: Silent and Lethal - How Quiet Corruption Undermines Africa's Development Efforts* (Washington, D.C. 2010) 3.

⁹⁹ Szeftel (n 80) 428.

They exaggerate the extent to which it is a cause of crisis in Africa rather than a symptom, albeit a virulent symptom, of deeper problems. And they underestimate both the depth of its roots in the very fabric of the post-colonial state and its resilience in the face of reform measures imposed from abroad.”¹⁰⁰

Naím provides another reason to exercise caution. He notes that data showing an increase in the rate of corruption in the region and in the global South generally in the last couple of decades may be attributed more to an increase in publicity than an actual atypical increase in the level of corruption.¹⁰¹ The expansion of democratic regimes in the region and the transparency that accompanies the process of democratic transition might be creating an ‘eruption of awareness’ about corruption. This might be responsible for the increased levels of perception about corruption.¹⁰²

Furthermore, Lambsdorff suggests that developments such as decentralisation, marketisation, financial integration and globalisation of business, media and politics might be creating new forms and opportunities for corruption to thrive.¹⁰³ If this is the case, it becomes precarious to ascertain reliable trends in the incidence of corruption over time. However, these factors are not peculiar to SSA or Nigeria. They are models and policies pursued globally, even though their effect in specific contexts may vary. Whatever their effect in SSA might be, the fact is that corruption continues to be a major challenge for development efforts.

¹⁰⁰ *ibid.*

¹⁰¹ Moisés Naím, ‘Corruption Eruption’ (1995) 2 *Brown Journal of World Affairs* 245-261.

¹⁰² *ibid.*

¹⁰³ Johann Graf Lambsdorff, ‘Causes and Consequences of Corruption: What do we Know from a Cross-Section of Countries?’ in Susan Rose-Ackerman (ed), *International Handbook on the Economics of Corruption* (Edward Elgar Publishing Ltd 2006) 3-51.

The high level and impact of corruption in the region has led many to the conclusion that the situation is now fatal; that the entrenched and pervasive nature of corruption in these countries means that they have reached a point of no return, where nothing much can be done about it any longer.¹⁰⁴ A consequence of this is the disempowering effect on ordinary people in terms of acting against corruption. A recent Transparency International study showed that almost 40 per cent of people in SSA feel that ordinary citizens cannot make a difference in anticorruption efforts. People in Nigeria felt least empowered in terms of acting against corruption.¹⁰⁵ In addition to looking at the problems of current anticorruption efforts, this work therefore considers the role that a rights-based approach can play in galvanising bottom-up citizen-led response against corruption. This is the subject of chapter seven.

2.5 Effects of Corruption on Development

Corruption has multifaceted effects on development. This is the foundation on which the anticorruption agenda is built; to address corruption and minimize its impact on development.¹⁰⁶ This section therefore examines the nature of the impact of corruption on development. It does this by showing the ways in which corruption affects economic development, social and political development, human development

¹⁰⁴ Bardhan (n 27) 1334-5.

¹⁰⁵ Afrobarometer and Transparency International (n 95) 21. See also Transparency International, 'Corruption on the Rise in Africa Poll as Governments Seen Failing to Stop it' (1 December 2015) <http://www.transparency.org/news/pressrelease/corruption_on_the_rise_in_africa_poll_as_governments_seen_failing_to_stop_it> accessed 8 November 2016.

¹⁰⁶ Heather Anne Marquette, 'The Origins and Development of the World Bank's Anti-Corruption Programme' (PhD thesis, Durham University 2002) 74.

and human rights. The discourse shows how the understanding of the effect of corruption has evolved in accordance with the broadening conception of development in the post-war era.

From a predominant focus on the economy as the central determinant of development, concern for social and political development was slowly mainstreamed into development discourse and practice.¹⁰⁷ Since the turn of the century, development has increasingly been defined with reference to human development and human rights. This section therefore discusses how corruption affects these various aspects of development as a justification for anticorruption efforts. But first it is necessary to consider some arguments that have been put forward as to the possible positive effects of corruption in certain circumstances, and the merits of such arguments.

2.5.1 Arguments on Possible Positive Effects of Corruption

Most arguments around the possible desirability of corruption revolve around two points. The first is that certain forms of corruption work like a direct form of payment for public officials. This serves as motivation for them, thereby enhancing the functioning of government. Bribes for instance, can serve as supplements for a bureaucrat's salary, especially in countries where the remuneration of civil servants is

¹⁰⁷ The evolution of the conception of development is discussed in detail in chapter 3 below, especially sections 3.1.1 and 3.2.1.

low.¹⁰⁸ Their effect has been compared to government raising taxes and increasing the remuneration of public servants.¹⁰⁹

Those in support of this therefore hold the view that corruption - especially petty corruption - is need-based and occurs because of poverty.¹¹⁰ Hence, public servants who seek bribes do so because of their meagre salaries, or in worse situations, because their salaries are unpaid. This argument should however be considered with caution. Public servants, low-ranking or not, are expected to perform the duties for which they are employed for the pay they are entitled to. It is therefore both immoral and illegal for them to seek bribes and engage in other acts of corruption on grounds of the meagre nature of their income. Moreover, there are established mechanisms within a democratic society for such workers to advocate for improvements in their wages and overall welfare.

The second argument is that businesses and private individuals are able, through corruption, to overcome clumsy bureaucratic regulations that slow down business and other developmental efforts. The ready example here again is bribery. The contention is that bribery could serve as an informal mechanism that improves the efficiency of administration in poorly functioning governments. Through what has been called 'speed money',¹¹¹ delays in moving files in public offices can be avoided, thereby

¹⁰⁸ Cheryl W. Gray and Daniel Kaufmann, 'Corruption and Development' (1998) 35 *Finance and Development* 7-10.

¹⁰⁹ Beatrice Weder, 'Institutions, Corruption and Development and Their Ramifications for International Cooperation', in Hans van Ginkel, Brendan Barret, Julius Court and Jerry Velasquez (eds) *Human Development and the Environment: Challenges for the United Nations in the New Millennium* (United Nations University Press 2002) 149-59.

¹¹⁰ Idowu Ajibade, 'Mainstreaming Human Rights into Anti-Corruption: A Strategy for Protecting Vulnerable Groups in Nigeria from Double Jeopardy' (November 2008) SSRN Electronic Journal 9 <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1304247> accessed 15 March 2016.

¹¹¹ Charles Kenny, Michael Klein and Monika Sztajerowska, 'A Trio of Perspectives on Corruption: Bias, Speed Money and Grand Theft Infrastructure' (2011) World Bank Policy Research Working Paper No. 5889, 6-11 <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1965920> accessed 29 April 2017.

enhancing efficiency.¹¹² Such bribes can also assist in getting private individuals and firms ahead in slow moving queues for public services, by serving as an 'oil that greases' ineffective and corroded bureaucracies.¹¹³ Bardhan captioned the essence of this thus:

*"In the context of pervasive and cumbersome regulations in developing countries, corruption may actually improve efficiency and help growth. Economists have shown that in the second-best world with pre-existing policy-induced distortions, additional distortions in the form of black-marketeering and smuggling might actually improve welfare As non-economists usually point out, corruption is the much-needed grease for the squeaking wheels of a rigid administration."*¹¹⁴

These arguments on the positives of corruption raises questions. The secretive nature of corruption makes it very distortionary and unpredictable. It is therefore difficult to reconcile such unpredictability and distortionary tendencies with the argument that corruption enhances efficiency. Businesses would ordinarily be reluctant to invest in an environment with unpredictable costs which engaging in bribery entails. Mauro's

¹¹² Nathaniel Leff, 'Economic Development Through Bureaucratic Corruption' (1964) 8(3) American Behavioural Scientist 8-14. See also Mushtaq H. Khan, 'Determinants of Corruption in Developing Countries: The Limits of Conventional Economic Analysis' in Susan Rose-Ackerman, *International Handbook on the Economics of Corruption* (Edward Elgar Publishing Ltd 2006) 216-244; Samuel P. Huntington, *Political Order in Changing Societies* (Yale University Press 1968).

¹¹³ Pranab Bardhan, 'Corruption and Development: A Review of Issues' (1997) 35 Journal of Economic Literature 1320, 1323. From a historical perspective, researchers point to cases, particularly in 15th century England and 19th century United States, where corruption of state establishments led to the quicker dispensing of licences, loans and concessions to business interests. This was considered to have helped in the emergence of an entrepreneurial class, leading to economic growth. See Ronald E. Wraith and Edgar Simkins, *Corruption in Developing Countries* (Allen and Unwin 1963).

¹¹⁴ Pranab Bardhan, *Scarcity, Conflicts, and Cooperation: Essays in the Political and Institutional Economics of Development* (MIT Press 2005) 139-40. See also Colin Leys, 'What is the Problem About Corruption?' in Arnold J. Heidenheimer (ed), *Political Corruption: Readings in Comparative Analysis* (Holt Rinehart and Winston 1970) 36.

1995 paper on corruption and growth demonstrated the negative correlation between corruption and foreign direct investment owing to this fact.¹¹⁵

Furthermore, bribes may diminish rather than enhance efficiency by serving as an incentive for public officials benefitting from such cumbersome bureaucratic systems to maintain the status quo.¹¹⁶ In this regard, corruption may have the effect of ‘throwing sand in the wheels’ rather than ‘greasing the wheels’ of bureaucracy. The incentive of bribes could encourage public officials to increase unnecessary regulations to create opportunities for further corruption.¹¹⁷ Furthermore, inefficiency could result in situations where, as noted by Bardhan, a public official is influenced by nepotism or favouritism and not the size of the bribe, or where bribery is utilised by a business to limit competition from rival firms.¹¹⁸

The efficiency argument also fails considering contracts between the briber and the bribee are not enforceable in courts on grounds of illegality. It is therefore impossible to achieve necessary enforcement that will allow for certainty and therefore efficiency. In any case, the efficiency argument overall appears to consider the objective of short-term efficiency over long-term challenges.¹¹⁹ These include issues with macroeconomic reforms and inequality that would result from such bribery.¹²⁰

It is instructive that the quote above from Bardhan’s work refers to a ‘second-best world’ scenario. These arguments on the potential positives of corruption are

¹¹⁵ Paolo Mauro ‘Corruption and Growth’ (1995) 110(3) *Quarterly Journal of Economics* 681-712.

¹¹⁶ John Waterbury, ‘Endemic and Planned Corruption in a Monarchical Regime’ (1973) 25(4) *World Politics* 533-555.

¹¹⁷ Gunnar Myrdal, ‘Corruption: Its Causes and Effects’ in Arnold J. Heidenheimer (ed), *Political Corruption: Readings in Comparative Analysis* (Holt Rinehart and Winston 1970) 540-545.

¹¹⁸ Bardhan (n 26) 1332-1333.

¹¹⁹ World Bank, *Helping Countries Combat Corruption* (n 6) 14.

¹²⁰ Susan Rose-Ackerman and Andrew H. W. Stone, ‘The Costs of Corruption for Private Business: Evidence from World Bank Surveys’ (World Bank 1996).

therefore, at best, attempts to find some constructive angle in a society that has failed to achieve preferable solutions and situations. The need to counter inefficiency in a system with additional distortions in the form of corrupt practices, or to speed up slow-moving bureaucratic processes through bribery would not arise if the systems were operating in an efficient and timely manner in the first place.¹²¹

2.5.2 Negative Effects of Corruption

Away from the above arguments, corruption is generally considered negative, with its effect on development described with metaphors like ‘cancer’, ‘virus’ and ‘disease’.¹²²

Trebilcock and Prado stated in brief the negative effects of corruption in countries in the global South, thus:

*The cost of corruption is high for developing countries, because it has a negative impact on a country's economy (impairing growth), its politics (affecting governmental regulation and policy decisions), its international relations (affecting FDI and diverting foreign aid from its intended purposes), and its society (worsening the distribution of wealth).*¹²³

¹²¹ Abhijit Banerjee, ‘A Theory of Misgovernance’ (1997) 112(4) The Quarterly Journal of Economics 1289-1332.

¹²² Olatunde Julius Otusanya, ‘Corruption as an Obstacle to Development in Developing Countries: A Review of Literature’ (2011) 14(4) Journal of Money Laundering Control 387-422.

¹²³ Trebilcock and Prado (n 36) 176.

As noted above, the effect of corruption on economic development, social and political development, human development and human rights is examined below.

2.5.2.1 *Effect of Corruption on Economic Development*

The existence of corruption in a country impacts negatively on its economic development in diverse ways. Firstly, it discourages foreign investment. A major reason for this is the distorting nature of corruption which results in an unpredictable business environment and random costs for businesses. Also, in the usual case of having to pay a bribe to get the requisite permits and licences to do business in a corrupt country, the prospect of incurring such high and avoidable transaction costs alone serves as a disincentive to invest. Notably, whilst in most countries, losses incurred by businesses can be deducted from investment income under tax systems, there is no such corresponding provision in the case of bribes. This is a factor which discourages potential investors from taking the risk to do business in corrupt countries. Mauro demonstrated this fact empirically by showing a negative correlation between corruption and foreign investment, as well as overall growth.¹²⁴

Related to this is the fact that corruption may hinder innovation by stifling the entry of new goods and technology into the economy.¹²⁵ Innovators usually require government-supplied goods like permits and licences which puts them directly or

¹²⁴ Mauro (n 115) 705. See also J. Edgardo Campos, Donald Lien and Sanjay Pradhan, 'The Impact of Corruption on Investment: Predictability Matters' (1999) 27(6) *World Development* 1059-1067; Paolo Mauro, 'The Effects of Corruption on Growth, Investment, and Government Expenditure: A Cross-country Analysis' in Kimberly Ann Elliot (ed), *Corruption and the Global Economy* (Institute for International Economics 1997) 83-108; Robert Klitgaard, 'Gifts and Bribes' in Richard Zeckhauser (ed) *Strategy and Choice* (MIT Press 1991) 211-240.

¹²⁵ Paul Romer, 'New Goods, Old Theory and the Welfare Costs of Trade Restrictions' (1994) 43(1) *Journal of Development Economics* 5.

indirectly at the mercy of public officials. Where such officials are corrupt, they may unduly delay the process of acquiring permits and licences, or make it unduly difficult in order to extract bribes or other favours. Such behaviour negatively impacts innovation, especially where the innovators or producers are unwilling to meet the demands of the corrupt officials or decide to invest elsewhere instead.

Furthermore, corruption also leads to a wastage of resources that would otherwise be utilised more efficiently by businesses to increase productivity. Studies suggest that in countries where corruption is common, as compared to less corrupt countries, representatives of private enterprises spend a lot more time with public officials, reflecting a wastage of valuable resources like money and time in rent-seeking activities.¹²⁶

However, whilst studies generally affirm this negative impact of corruption on economic growth,¹²⁷ some indicate that the effect is not always direct. A study by Mo indicates that the channels through which corruption affects growth include its impact on the ratio of investment to GDP, the level of political instability in a country, and its impact on human capital formation - measured by average schooling years.¹²⁸ Such seemingly intervening factors notwithstanding, there is little doubt that a country fraught with corruption is likely to fare less well economically than a less corrupt country.

¹²⁶ Rayond Fisman and Robera Gatti, 'Bargaining for Bribes: The Role of Institutions (2006) Discussion Paper No. 5712, CEPR.

¹²⁷ Emmanuel Anoruo and Habtu Braha, 'Corruption and Economic Growth: The African Experience' (2005) 7(1) *Journal of Sustainable Development in Africa* 43-55. See also Paulo Mauro, 'The Effects of Corruption on Growth, Investment and Government Expenditure: A Cross-Country Analysis' in K. Elliot (ed) *Corruption and the Global Economy* (Institute for International Economics, Washington 1997) 83-107.

¹²⁸ Pak Hung Mo, 'Corruption and Economic Growth' (2001) 29 *Journal of Comparative Economics* 66-79.

2.5.2.2 *Effect of Corruption on Socio-Political Development.*

The social costs of corruption arise from corrupt officials engaging in activities and making decisions that provide the best opportunities for their selfish ends. This leads to inefficient resource allocation and wastage of public funds on things that are inappropriate to the developmental needs of the country, with attendant social consequences.¹²⁹ It explains why poor countries often end up spending most of their resources in sectors like infrastructure and defence where there are better opportunities for corruption,¹³⁰ than in sectors which offer fewer opportunities, but are more socially expedient. A 1998 study by Mauro found that corruption significantly reduces government expenditure on education and health in particular, in view of the lesser rent-seeking opportunities provided by those sectors in comparison to others.¹³¹

Also, the imperatives of secrecy and continuation of corruption make officials hostile to change and innovation, if they perceive ideas as threats to the continuation of their corrupt activities. The fact that such ideas may be beneficial to the social wellbeing of the country and its people becomes immaterial in such circumstances. Hence, a corrupt public official might object to the digitalisation of public services which would reduce interface with people and thereby reduce opportunities to seek bribes. This

¹²⁹ Shleifer and Vishny (n 8) 614.

¹³⁰ *ibid.*

¹³¹ Paulo Mauro, 'Corruption and the Composition of Government Expenditure' (1998) 69 *Journal of Public Economics* 263-279

would be the case, even though such digitalisation would provide cost savings to government and the people and ensure better delivery of public services.¹³²

Related to this is how the motivation of corrupt public officials to consolidate their gains and practices also impacts negatively on social development. To achieve their aim of fashioning more opportunities for corruption, extra regulations are often introduced leading to the creation of more bureaucratic structures. This invariably leads to unnecessary costs required to enforce such regulations, when those sums might have been put to better use in the provision of social services like education, health and infrastructure.¹³³

Corruption also defeats the effectiveness of legislation and policies intended to serve social purposes such as environmental controls, building codes and prudent banking practices. Through corruption, individuals and organisations can circumvent their obligations under such legislation and policies, thereby causing serious social harm.¹³⁴ The most glaring example of this is environmental regulations which are often successfully bypassed by corporations that are able to bribe public officials charged with enforcing and monitoring compliance.

Another perspective on the socio-political costs of corruption is that the prevalence of corruption in a country often leads to the state spending a lot on anti-corruption programmes at the expense of spending on much-needed social services. Klitgaard

¹³² Prashanth Mahagaonkar, 'Corruption and Innovation: A Grease or Sand Relationship' (2008) Jena Economic Research Paper No. 2008-017, 1-25 <<https://www.econstor.eu/bitstream/10419/25713/1/560547560.PDF>> accessed 29 April 2017.

¹³³ Sanjeev Gupta, Hamid Davoodi and Erwin Tiongson, 'Corruption and the Provision of Health Care and Educational Services' (2000) IMF Working Paper WP/00/116, 1-32 <<https://www.imf.org/external/pubs/ft/wp/2000/wp00116.pdf>> accessed 29 April 2017. See also David J. Gould and Jose A. Amaro-Reyes 'The Effects of Corruption on Administrative Performance: Illustrations from Developing Countries' (1983) World Bank Staff Working Paper N0. 580.

¹³⁴ Cheryl W. Gray and Daniel Kaufmann, 'Corruption and Development' (1998) 35 Finance and Development 9-10.

notes that trying to eliminate even the smallest amount of corruption can create excessive red tape and divert resources from other objectives.¹³⁵ In extreme cases the cost of reducing corruption may be somewhat greater than the harm caused by the corruption.¹³⁶ The fact that anticorruption programmes in most countries in SSA tend to be ineffective only justifies more spending on such programmes, when these sums might have been put to better use on social programmes. This is a vicious circle in which most countries in the region are trapped.

Corruption also creates distributional injustices in society. A public system running on bribery and other forms of corruption is likely to favour those who can afford to pay bribes and exclude the poor, thereby perpetuating inequality.¹³⁷ The poor may therefore be denied access to even basic social amenities like electricity and water, where they cannot afford to pay the required bribe.

In political terms, corruption in the form of nepotism has the potential of creating injustices in power distribution. The result of this in terms of peace, stability and overall development could be costly. A USAID working document notes that when corruption seriously compromises the legal and political system by negatively impacting on the protection of civil liberties and public order, predation by the rich and powerful in society can reach catastrophic dimensions.¹³⁸ The rule of law and other political institutions also suffer. This leads to the fundamental weakening of legitimacy and effectiveness of democratic governance.¹³⁹ Michael Johnson surmises this thus:

¹³⁵ Klitgaard (n 29) 120-21, 184.

¹³⁶ Ibid. 203.

¹³⁷ International Council on Human Rights Policy and Transparency International, *Corruption and Human Rights: Making the Connection* (ICHRP, Switzerland 2009) V, 1-23.

¹³⁸ USAID (n 24) 4.

¹³⁹ Ibid 1.

‘corruption erodes the ability of a nation to reform itself and to build more open, responsive, credible and legitimate political institutions’.¹⁴⁰

2.5.2.3 *Effect of Corruption on Human Development*

Drawing from UNDP’s 1992 report, human development is generally accepted to be ‘the process of enlarging the range of people’s choices - increasing their opportunities for education, healthcare, income and employment - and covering the full range of human choices from a sound physical environment to economic and political freedoms.’¹⁴¹ This conception of human development leads to the notion which is now widely accepted, that the ‘human’ component is the central point at which development in all other sectors of society - economic, political, social and cultural - converge. In the light of this, the above discussion on the negative effect of corruption on economic, social and political development leads to the conclusion that corruption impacts negatively on human development.

Beyond this logical inference, there are studies that directly affirm the negative impact of corruption on human development. Gupta, Davoodi and Alonso-Terme’s 2002 paper examined how corruption reduces social spending, fosters inequality in education and causes unequal distribution of land and income in society.¹⁴² Research by Kaufmann, Kray and Zoido-Lobaton found that corruption reduces life expectancy,

¹⁴⁰ Michael Johnson, ‘The Political Costs of Corruption’ (First Latin American Conference on the Fight Against Bureaucratic Corruption, Santa Fe de Bogota, November 1993).

¹⁴¹ UNDP, *Human Development Report 1992* (OUP 1992) 2.

¹⁴² Sanjeev Gupta, Hamid Davoodi and Rosa Alonso-Terme, ‘Does Corruption Affect Income Inequality and Poverty?’ (2002) 3(1) *Economics of Governance* 22-45.

infant mortality rates and literacy levels.¹⁴³ Gupta, Davoodi and Tiongson's empirical work also reveals how corruption increases child and infant mortality rates and increases dropout rates in primary school.¹⁴⁴ These studies show that there are various ways in which this effect of corruption may be manifested. It may be through an increase in the cost of healthcare, education and other public services through bribery. This would put such services out of the reach of the poor. Corruption could also lead to the lowering of the quality of such services.¹⁴⁵

Akçay's 2006 work considered the direct effect of corruption on human development by using the 1998 human development index as the dependent variable and considering it against data on corruption from the corruption index of Transparency International (TI), the International Country Risk Guide (ICRG) compiled by Political Risk Guide and the corruption index devised by Kaufmann, Kraay and Mastruzzi. Exploring this relationship in a sample of 63 countries, Akçay concluded that 'there is a statistically significant negative relationship between corruption indexes and human development.'¹⁴⁶

¹⁴³ D. Kaufmann, A. Kraay and M. Mastruzzi, 'Governance Matters' III: Governance Indicators for 1996-2002' (2003) World Bank Policy Research Department Working Paper No. 2196 <<http://elibrary.worldbank.org/doi/pdf/10.1596/1813-9450-2196>> accessed 27 October 2014.

¹⁴⁴ S. Gupta, H. Davoodi and E. Tiongson, 'Corruption and the Provision of Health Care and Education Services' (2000) IMF Working Paper No. 116 <<http://www.imf.org/external/pubs/ft/wp/2000/wp00116.pdf>> accessed 27 October 2014.

¹⁴⁵ Selçuk Akçay, 'Corruption and Human Development' (2006) 26(1) Cato Journal 29-48. See also Lambsdorff (n 102) 33.

¹⁴⁶ Akçay (ibid) 46. See also The Economist, 'Corrosive Corruption: A Correlation Between Corruption and Development' (London, 2 December 2011) <<http://www.economist.com/blogs/dailychart/2011/12/corruption-and-development>> accessed 29 April 2017.

2.6 Effect of Corruption on Human Rights

Building on the established negative impact of corruption on human development,¹⁴⁷ there is a further case that no individual can enjoy development without respect for and protection of their human rights.¹⁴⁸ The argument that the enjoyment of human rights is essential to human development establishes, at least at a theoretical level, a relationship between corruption and human rights. This section explores this relationship by discussing the practical ways in which corruption affects human rights.

The impact of corruption on human rights may be direct or indirect. This is the classification used here for purposes of clarity. It is however worth mentioning other ways in which this effect has been classified. The UN Human Rights Council for instance, suggests a classification based on the different obligations arising from the human rights commitments of states.¹⁴⁹ Hence, corruption can have an individual negative impact, where it results in the violation of the rights of an individual. It can also have a collective negative impact where the impact is on groups of individuals in society like the poor, ethnic minorities, women, children, elders, persons with disabilities or indigenous people.¹⁵⁰ Finally, corruption can have a broader general negative impact, in which case, the effect is on society at large.¹⁵¹ As noted above, in each of these cases, the impact of corruption may be direct or indirect.

¹⁴⁷ Akcay (n 145) 29-48; Johann Graf Lambsdorff, 'Causes and Consequences of Corruption: What do we Know from a Cross-Section of Countries?' in Susan Rose-Ackerman (ed), *International Handbook on the Economics of Corruption* (Edward Elgar Publishing 2006) 3-51.

¹⁴⁸ UNDP, *Human Development Report: Human Rights and Human Development 2000* (New York 2000); OHCHR, 'Frequently Asked Questions on a Human Rights-Based Approach to Development Cooperation. (New York and Geneva 2006).

¹⁴⁹ UNHRC, 'Final Report of the Human Rights Council Advisory Committee on the Issue of the Negative Impact of Corruption on the Enjoyment of Human Rights (2 January 2015) A/HRC/28/73, 7.

¹⁵⁰ *ibid.*

¹⁵¹ *ibid.*

2.6.1 Direct Effect of Corruption on Human Rights

The direct effect of corruption on human rights arises where an act of corruption results in the deliberate violation of a right or where an act of corruption can be considered the cause of the deprivation of the enjoyment of human rights. This may occur, for instance, where a party in a case offers a bribe to a judge, thereby affecting his impartiality and averting the course of justice. This would constitute a violation of the right to fair trial of the other party.¹⁵² The Advisory Committee of the Human Rights Council noted the serious way judicial corruption in such cases imperils the rule of law, democracy and human rights.¹⁵³ Other ways in which corruption negatively impacts human rights directly include the buying of votes to undermine the right of citizens to political participation.

Furthermore, the direct impact of corruption on human rights can also be understood from the perspective of the denial of access to basic services like education, health and housing due to corruption of public officials. The right to health is violated for instance, where medical staff in a public hospital fail to provide needed treatment to someone, whilst providing such treatment to other patients who pay bribes to the staff. In such cases, according to Julio Bacio-Terracino, it is the conditionality of access based on the giving of a bribe that leads to the violation.¹⁵⁴ Similarly, a violation of the right to education occurs where schools are unable to provide good education for

¹⁵² Parliamentary Assembly of the Council of Europe, Committee on Legal Affairs and Human Rights, 'Background Document Prepared by the European Human Rights Association (2014) AS/Jur 19.

¹⁵³ UNHRC. (n 149) 10.

¹⁵⁴ Julio Bacio-Terracino, 'Corruption as a Violation of Human Rights' (2008), international Council on Human Rights Policy, 11 <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1107918> accessed 24 March 2015.

students because public officials embezzle the budgetary allocation for the education sector. Another example is where poor families cannot benefit from social security programmes because authorities in charge administer such programmes based on patronage systems.¹⁵⁵

Hence, the impact of corruption on human rights becomes apparent in any situation where the resources available to government for the provision of education, health and other services are diminished or depleted because of corruption or where there is discriminatory access to such services. In other words, corruption impairs the ability of governments to fulfil their human rights obligations to dedicate the maximum of their resources to the protection and realisation of the rights of their citizens.¹⁵⁶ In the situations discussed, corruption affected the availability, affordability accessibility and quality of human rights-relevant goods and services.¹⁵⁷

2.6.2 Indirect Effect of Corruption on Human Rights

Corruption affects human rights indirectly in situations where an act of corruption constitutes an essential element in a chain of events that culminates in the violation of a right.¹⁵⁸ Here, the corrupt act can be considered a factor that fuels the violation of human rights. The UN Human Rights Council suggested that a good way of looking at the distinction between situations where corruption impacts human rights directly

¹⁵⁵ ibid 31. The instances where corruption negatively affects human rights are numerous. See Bacio-Terracino's paper above for a broader discussion of the effect of corruption on selected human rights.

¹⁵⁶ Anne Peters, *Corruption and Human Rights* (Basel Institute of Governance 2015) 16-18.

¹⁵⁷ UNHRC, 'Cross Regional Statement on Corruption and Human Rights' Delivered by Morocco on Behalf of a Group of 132 States (26 June 2012) <<http://www.ohchr.org/Documents/Issues/Development/GoodGovernance/Corruption/MoroccoStatementHRAndCorruption.pdf>> 2 February 2017.

¹⁵⁸ International Council on Human Rights and Transparency International, *Corruption and Human Rights: Making the Connection* (Switzerland 2009) 27.

and indirectly is to consider the former as a case where corruption leads to a ‘violation of human rights’ and the later as a case where corruption negatively ‘affects human rights’.¹⁵⁹

Instances where corruption may constitute a violation of human rights indirectly include where a public official, due to a bribe, fails to inspect and ensure the completion of a project for the building of a school by a contractor. The result of this may be the denial of access to education to students. Even though this may directly be attributed to the failure of the contractor to complete the project, the act of corruption that influenced the lack of supervision by the public official could be considered an indirect cause of the denial of the right to education. This illustration might appear theoretical, but the analysis of problems like this beyond the usual political, budgetary or administrative parameters, to the indirect role of corruption may provide much-needed insights for resolving them. It deepens the understanding of the role of corruption in such situations.

Various studies have established the impact of corruption on the quality and effectiveness of institutions.¹⁶⁰ Courts and other government institutions responsible for the protection of human rights are no exception. Hence, corruption can be considered a structural obstacle to the realisation of human rights to the extent that it negatively impacts on the effectiveness of institutions that are integral to the protection and fulfilment of human rights.¹⁶¹ Reference to this can be found in the cross regional statement delivered by Morocco to the 20th Session of the Human Rights Council in

¹⁵⁹ United Nations Human Rights Council, ‘Research-Based Progress Report on the Negative Impact of Corruption on the Enjoyment of Human Rights’ (11-15 August 2014) 7.

¹⁶⁰ See for instance, Bertrand Venard, ‘Institutions, Corruption and Sustainable Development’ (2013) 4 (33) *Economics Bulletin* 2545-2562; Wouter Ebben and Albert de Vaal, ‘Institutions and the Relation Between Corruption and Economic Growth’ (2009) NiCE Working Paper 09-104.

¹⁶¹ Gareth Sweeney, ‘Linking Acts of Corruption with Specific Human Rights’ (European Sub-Committee on Human Rights, ‘Corruption and Human Rights in Third Countries’ Workshop 28 February 2013) 1.

2012 which noted the weakening of state institutions as a fundamental way in which corruption negatively impacts human rights.¹⁶² In broader terms, 'corruption undermines the very foundation of a representative government, the rule of law, good governance and the tenets of human rights law'.¹⁶³

The discourse in the earlier parts of this chapter considered how the impact of corruption on the socio-economic development of individuals invariably leads to poverty and inequality. Poverty hampers the capabilities of people that would enable them to understand, demand and enforce their human rights. This is yet another way in which corruption negatively impacts on the enjoyment of human rights, albeit indirectly.

Furthermore, in accordance with the principle of interdependence of human rights,¹⁶⁴ the negative effect of an act of corruption on human rights may be manifested in the violation of more than one right.¹⁶⁵ This is especially so in instances where the effect is indirect. Hence an act of corruption which violates the right to fair trial could also affect a person's right to education or health or work, where the violation of one of these rights constitutes the issue in the case where fair trial was averted. Similarly, where a person's right to education is violated due to corruption, this would, in the long run, affect the ability of such person to enjoy other rights like the rights to health, a decent standard of living, the right to dignity of the human person, and even the right to life.

¹⁶² UNHRC, Cross Regional Statement on Corruption and Human Rights (n 157).

¹⁶³ Kolawole Olaniyan, *Corruption and Human Rights Law in Africa* (Hart Publishing 2014) 314.

¹⁶⁴ See OHCHR, 'Vienna Declaration and Programme of Action' (12 July 1993) A/CONF.157/23.

¹⁶⁵ UN ECOSOC 'Preliminary Report of the Special Rapporteur, Ms. Christy Mbonu on Corruption and its Impact on the Full Enjoyment of Human Rights, in Particular, Economic, Social and Cultural Rights' (7 July 2004) E/CN.4/Sub.2/2004/23.

The instances where corruption can lead to a violation of human rights are numerous and cannot all be examined here.¹⁶⁶ It may however be noted that the consequences of the violation may be long-term and not immediately apparent, especially where the impact is indirect.¹⁶⁷ Hence, making the indirect link between corruption and human rights violations requires an understanding of how the cycle of corruption facilitates, perpetuates and institutionalises violations of human rights.¹⁶⁸

2.7 Conclusion

This chapter has considered conceptual and practical issues about corruption. It has argued for the adoption of a broad definition of corruption that encompasses the public and private sector. Whilst such conception of corruption finds expression in international instruments on the subject and is also applied by CSOs like Transparency International, the compelling public-sector focus of anticorruption efforts is obvious. This is because the World Bank and other neoliberal development institutions that

¹⁶⁶ For a discussion of instances where corruption impacts specific human rights, see International Council on Human Rights and Transparency International, *Corruption and Human Rights: Making the Connection* (Switzerland 2009); Julio Bacio-Terracino, 'Corruption as a Violation of Human Rights' (2008), International Council on Human Rights Policy, 11 <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1107918> accessed 24 March 2015.

¹⁶⁷ An example of this would be situations where a government gets elected by bribing electoral officials. Upon gaining power, if the government implements suppressive policies that lead to the violation of human rights, such violation can be attributed to the initial act of corruption that got the government elected in the first place, even though the impact was not direct and immediate.

¹⁶⁸ UN Committee Against Torture, 'Seventh Annual Report of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman and Degrading Treatment and Punishment' (52nd Session, 20 March 2014) UN Doc CAT/C/52/2, 76.

were pivotal in the introduction and mainstreaming of the current anticorruption agenda adopted a conception of corruption focused on the public sector.

Beyond this, the discussion in the chapter establishes the complex nature of most issues regarding corruption such as its typology, measurement and understanding of its incidence in SSA. It notes the fact that despite such complexities, there appears to be an attempt in the literature and the approach of institutions to provide simplistic answers and solutions on the issue of corruption. A balanced perspective of the various views on these issues is presented in the chapter with the objective of ascertaining what impact they may have or could yet have on the conception and approach of current anticorruption efforts. The practical outcome of this is not considered here, as it is considered later in the work when the anticorruption regime in Nigeria is examined.

The impact of corruption on development is one area where there is evident consensus. Corruption is generally seen as having a negative impact on development. In this chapter, the discussion of this impact is carried out in a manner that demonstrates the evolution of the understanding of the impact of corruption in the field of development. It shows that this has progressed from a consideration of its impact on the economy to broader issues of socio-political and human development. This progression will become even more apparent in the next chapter when the changing conception of development itself over the years is discussed. The impact of corruption on human rights is particularly important in the context of this work. It stands at the foundation of a whole new approach to anticorruption - the rights-based approach - which is considered in chapter seven.

Chapter Three: THE APPROACH TO CORRUPTION IN THE FIRST AND SECOND MOMENTS OF LAW AND DEVELOPMENT

3.0 Introduction

This chapter examines the approach to corruption in the first and second moments of law and development. It looks at what informed the approach in each moment and the relationship between the approaches in both moments and how corruption was dealt with locally in countries in the region.

Both moments are discussed in one chapter due to the similarity of their approach in contrast to the approach in the third moment which is considered later. For each moment, the conception of development is first discussed. This is followed by the role of law in the development process and then the approach to corruption during that moment. The general pattern that emerges from the discussion is that the approach to corruption in each moment was informed by both the manner development was defined and the role law played in the development process.

This discussion is necessary because it provides insights on why it took long for the field of international development to engage with the issue of corruption. More importantly, it provides an important background to current anticorruption efforts, especially regarding the challenges faced by countries in SSA in their bid to address corruption.

3.1 The Moment of Law and The Classic Developmental State

3.1.1 Conception of Development: The Economic Growth Paradigm

The first two decades marking the commencement of intense development efforts on the international stage were focused on promoting the economic growth of countries in the global South. The drive for economic progress was considered essential for most of these countries which had just gained independence in the 1950s and 1960s. Development agencies and practitioners were heavily reliant on economic models for development proposed by top economists like John Maynard Keynes whose work dominated development discourse during this period. The means for achieving economic growth was considered to be through industrialisation and increase in productivity. Progress was measured based on increase in economic parameters like Gross Domestic Product (GDP) or Gross National Product (GNP).

Whereas the emphasis on economic growth was pervasive during this period, there was less agreement amongst development practitioners on the predominant sector that should drive the development process. Hence, in the first couple of decades immediately following the independence of countries in SSA, the state was considered most suited to drive the development process. Aptly referred to in law and development discourse as the moment of the 'classic developmental state', state-run industries were prevalent and the state was required to mould and direct economic behaviour. This approach saw the emergence of Import Substitution Industrialization (ISI) in most Latin American and African countries, characterised by state-led

economic development policies such as nationalisation, subsidisation of vital industries and increased taxation.

In October 1973, because of an embargo on oil placed by Arab states over United States support for Israel in the Yom Kippur war, the price of oil rose dramatically. This led to a rise in inflation and recession in most countries. In SSA, food prices rocketed and a lot of suffering ensued. In reaction, the World Bank under Robert McNamara, initiated a shift in strategy towards a more poverty-oriented approach.¹ Other donors such as the United Kingdom and the United States also followed suit in focusing on alleviating the ensuing poverty and corruption.² However, this ultimately proved to be a temporary reaction to the situation and the seeming shift in strategy towards social dimensions of development waned as prevailing circumstances changed. By the mid-1980s, following the debt crisis at the start of that decade, occasioned by another oil crisis in 1979 that threatened to break down the economies of most countries in the region, the focus was firmly back on economic development. The World Bank and the IMF became focused on implementing the neoliberal structural adjustment of the economies of countries in the region. This eventually led to the crystallisation of the second moment of development thought, considered in section 3.2 below.

The predominantly economic conceptualisation of development during the first moment of law and development has been supported on a few grounds. The use of GNP and GDP in measuring development for instance, provides a convenient means

¹ Dambisa Moyo, *Dead Aid: Why Aid Makes Things Worse in Africa and How There is Another Way for Africa* (Penguin Books 2009) 16.

² To this effect, the United Kingdom in 1975 published a white paper titled, 'The Changing Emphasis in British Aid Policies: More Help for the Poorest'. It detailed the strategy of the Overseas Department to ensure that British aid directly benefitted the poorest people in recipient countries and concentrated on sectors like housing, health, education and family planning.

On its part, the United States passed the International Development and Food Assistance Act with the object of making sure that 75 per cent of its Food for Peace programme went to countries with the lowest per capita income.

of determining the development trend of a country. In addition, these indicators are useful in establishing progress about development objectives and in planning future courses of development. Whilst they may not indicate challenges in the social and political scene of a country, they highlight sectors of the economy that may need improvement for a country to reach its overall development targets.

Furthermore, economic growth can be an indicator of development potential. A country with a good outlook in terms of economic growth, although not achieving poverty reduction or reducing inequality in the interim, may in fact be directly and indirectly establishing the systems, institutions and conditions necessary for comprehensive development. Factors including a good fiscal system, greater savings, high levels of per capita investment, etc. that are all typical of economic growth may well foreshadow and prove instrumental in the ability of a country to realise genuine development in the future.³

The fact however is that the emphasis on 'the economic' during this period downplayed the significance of the social, political and cultural facets of development in society. The following pitfalls are identifiable in this respect. Firstly, development experts, including economists, now recognise the fact that economic growth, by itself does not always lead to meaningful development in society generally and the alleviation of poverty in particular;⁴ a reality that has come to be termed 'growth without development'.⁵ Indices of GNP and GDP are often technical indications of development which do not represent a corresponding improvement in the quality of

³ Dudley Seers, 'The Meaning of Development' (1969) Institute of Development Studies Communication 44, 1-26.

⁴ Kerry Rittich, 'The Future of law and Development: Second-Generation reforms and the Incorporation of the Social' in D. M Trubek and A. Santos, *The New Law and Economic Development: A Critical Appraisal* (CUP 2006) 203.

⁵ Robert W. Clower et. al, *Growth Without Development: An Economic Survey of Liberia* (North-Western University Press 1966) 1-16.

lives of the individuals in society. Such measurements do not also highlight much required social and political change in most countries in the global south. Todaro and Smith recall that the questioning of an economic model of development was signalled by the experience of most countries in the 1950s and 1960s that reached their economic growth targets with no resultant improvement in the living standards of their masses.⁶ Sen therefore argues that a comprehensive conception of development must look beyond the growth of GDP and other income-related variables and the general accumulation of wealth.⁷

Secondly, it has been noted that, in extreme cases, growth has been achieved at the expense of social and political advancements. The result being that general development itself becomes negative in the long run.⁸ According to Rist, 'the essence of development', in such instances, is the transformation and destruction of social relations and the natural environment in order to increase the production of commodities geared by demand'.⁹ Seers points to the manifestation of this in countries with positive indicators on measures of economic development but which are afflicted with social problems and political upheavals that adversely impacts the wellbeing of citizens.¹⁰ It has been argued that, in such situations, poverty could be seen, not as a failure of capitalism to bring about development, but rather as proof of the proper functioning of capitalist systems.¹¹

⁶ Michael P. Todaro and Stephen C. Smith, *Economic Development* (11th Edn, Addison Wesley 2012) 14.

⁷ Amartya Sen, *Development as Freedom* (OUP 1999) 14.

⁸ Seers (n 3) 2.

⁹ Gilbert Rist, *The History of Development: From Western Origins to Global Faith* (Zed Books 1997) 12.

¹⁰ Seers (n 3) 2.

¹¹ See Generally, the work of Jeremy Seabrook, *The Race for Riches: The Human Cost of Wealth* (Marshall Pickering 1988).

3.1.2 Law in Aid of the Classic Developmental State

The understanding of the role of law in development can be traced as far back as Adam Smith's discussion of 'the economic effect of mercantile legislation' in his landmark work, *An Inquiry into the Nature and Causes of the Wealth of Nations*, first published in 1776.¹² Apart from Adam Smith, other early scholars who showed an interest in the relationship between law and development include Maine, Montesquieu, Weber and Marx.¹³ The recent history of law and development as a discipline is however linked to the initiatives of US academics and development experts in the early 1960s. These initiatives were aimed at promoting legal and institutional reforms in the newly independent countries of the so-called 'Third World' based on Western models.¹⁴ These efforts signalled the commencement of the first moment of law and development. This moment was basically state-centric based on development theories that emphasised the role of the state as the driver of economic growth. Law in this setting was regarded as an instrument of intervention by the State in the economy to foster development.¹⁵ To achieve this, several law reform projects were initiated in a

¹² See Adam Smith, *An Inquiry into the Nature and Causes of the Wealth of Nations: A Selected Edition* (OUP 2008).

¹³ Kevin E. Davis and Michael. Trebilcock 'The Relationship between Law and Development: Optimists Versus Skeptics' (2008) 56 *American Journal of Comparative Law* 895-946. In fact, the works of the Weber and Marx would go on to have a tremendous effect on the theories of modernisation and dependency which transverse development discourse in modern times.

¹⁴ Kalidou Gadio, 'The Role of Law in Development for the African Continent from a Development Agency Perspective' (Harvard African Law and Development Conference, Cambridge, MA, 16-18 April 2010)

¹⁵ F. C. Sherman, 'Law and Development Today: The New Developmentalism' (2009) 10 (9) *German Law Journal* 1258-1273.

few states along the lines of 'professionalisation' of the legal profession and transplant of supporting legal institutions and modern laws.

Davis and Trebilcock rightly point out that the moment of law and the classic developmental state was characterised by the theoretical foundation of the concept of modernisation which advances a relationship of qualified cooperation between the 'developed and developing nations' of the world. This concept was premised on the fact that modernisation is a prerequisite to development and that global South countries must evolve from their traditional state to modernised societies to be developed.¹⁶ Rostow laid out the classic five stages of this evolution process as follows:

[F]irst, the traditional society, organised around agrarian subsistence modes of production; second, the preconditions for take-off, triggered by encounters with external forces; third, the take-off, marked by industrial development and increased economic growth; fourth, the drive towards maturity with a sustained level of economic productivity and greater linkages with the international economy, and finally, the age of mass production, where consumption needs replace basic subsistence needs.¹⁷

¹⁶ Davis and Trebilcock (n 13) 900-901.

¹⁷ Walt W. Rostow, *The Stages of Economic Growth: A Non-Communist Manifesto* (CUP 1960) 4-14, as quoted by Lan Cao, 'Law and Economic Development: A New Beginning? Review of Anthony Carty (ed) *Law and Development*' (1997) 32 Texas Intl LJ 545, 549.

Law was considered central to this evolution.¹⁸ This was based on the widely-held view that ‘a more developed legal system leads to a more highly developed economy and polity’.¹⁹ The expectation was therefore that law would provide the requisite legal infrastructure on which development would thrive. Sherman aptly summarised the role of law during this period:

*The classic developmental state required laws and legal institutions that would allow it to direct and mould economic behaviour. Legislation served as a tool for effecting national economic planning and law more generally served to create the framework for bureaucratisation and governance of state industry. Lawyers working in development agencies, universities and other organisations in the United States and Europe took up the agenda of law reform in this context. Thus, they held a functionalist conception of law as an instrument with which to facilitate state-led development.*²⁰

As noted earlier, a major preoccupation of this moment was to modernise the legal culture of countries in SSA through educational reform. This was because legal education was regarded as the source of legal formalism, which designers of law and development programmes at the time considered as a central impediment to a functionalist legal culture in the global South. Legal formalism was considered a notion of law as autonomous and abstract principles that can be deduced and applied without regard to socio-economic and policy objectives. Thus, a significant step taken towards modifying this notion was the reforming of law schools with the object of implementing

¹⁸ David M. Trubek and Marc Galanter, ‘Scholars in Self-Estrangement: Some Reflections on the Crisis in Law and Development Studies in the United States’ (1974) *Wisconsin Law Review*, 1062-1103.

¹⁹ Lawrence M. Friedman, ‘On Legal Development’ (1969) 24 *Rutgers Law Review* 11, 52-53.

²⁰ Sherman (n 15) 1262

a functionalist legal culture that was conducive to economic development.²¹ Training lawyers to see and use law as an instrument for change, it was assumed, would promote the developmental goals of the state.²²

The second major fixation of this moment was legal transplants of modern laws and institutions which, according to scholars and practitioners, were lacking in countries in the global South. It was considered of utmost importance 'to strengthen the legal capacity of state agencies and state corporations and modernise the legal profession by encouraging pragmatic, policy-oriented lawyering'.²³ The focus of the transplants was on economic laws on the pretext that the resulting development would have a spill-over effect and create a liberal-democratic order. Connecting with the first policy fixation for the moment mentioned above, the assumption was that if the ideas taught in law schools in the global South could be changed, the attitude of lawyers would change also, and if the right laws were created, they would be enforced. Furthermore, it was expected that the 'western rule of law' would be embraced and implemented if its positive benefits could be demonstrated.²⁴ Whether or not such benefits accrued to global South countries in tandem with this line of thought continue to be a subject of debate.

The justification for considering the transplant of modern legislation as the best means to solve the many development problems in SSA was that such problems were so pressing, and 'so contracted [was] the time span for development that direct and

²¹ *ibid*

²² Davis and Trebilcock (n 13) 901

²³ David M. Trubek and Alvaro Santos (eds), 'Introduction: The Third Moment in Law and Development Theory and the Emergence of a New Critical Practice' in *The New Law and Economic Development: A Critical Appraisal* (CUP 2006) 1-18.

²⁴ David M. Trubek, 'Law and Development' in N.J. Smelser and P. B. Baltes (eds), *International Encyclopedia of Social & Behavioural Sciences* (Pergamon 2001) 8443-8446.

manageable solutions were considered necessary'.²⁵ Supporting this outlook, Rene David, author of the Ethiopian Civil Code of 1960 declared, 'Ethiopia cannot wait 300 or 500 years to construct in an empirical fashion a system of law which is unique to itself. The development and modernisation of Ethiopia necessitate the adoption of a "ready-made" [sic] system'.²⁶ Others have claimed that this was necessary because, although the customary law of the peoples of SSA was sufficient in handling certain subsistence purposes in tandem with the lifestyle of the people at the time, it was ill-adapted to the demands of the anticipated economic development. This was especially the case in the areas of commercial law and public law like finance, banking, labour law, state enterprises, import controls, exchange controls, limitations on the repatriation of profits, income taxation, trade unions and a host of others²⁷

However, the reality on the ground and the limited success of most of such transplanted legislations in fostering development in the region has subjected this approach to a good deal of criticism from both within and outside the field of law and development.²⁸ A lot of the criticism on the adoption of a modernisation framework at the beginning of law and development programming has centred upon the fact that the massive transplantation of a different system of laws to global South countries occurred without necessary adaptation to suit the socio-political situations in the respective countries. Scholars like Tamanaha iterated this point by adopting terms such as 'context matters', and 'circumstances on the ground shape how things work'

²⁵ Elliot M. Burg, 'Law and Development: A Review of the Literature and Critique of "Scholars in Self-Estrangement"' (1977) 25 American Journal of Comparative Law 492, 506.

²⁶ Rene David, 'A Civil Code for Ethiopia: Considerations on the Codification of the Civil Law in African Countries' (1963) 37 Tulsa. Law Review 187, 188.

²⁷ Robert Seidman, 'Law and Economic Development in Independent, English-Speaking, Sub-Saharan Africa' (1966) Wisconsin L. Rev. 999-1027. See also Robert Seidman, 'Law and Development: A General Model' (1972) 6 Law & Society Rev. 311-327.

²⁸ See for instance, the classic work of D.M. Trubek and M. Galanter: "Scholars in Self-Estrangement: Some Reflections on the Crisis in Law and Development Studies in the United States" (1974) Wisconsin Law Review 1062.

to describe the drawbacks of this approach.²⁹ Another reason corollary to this was the ill-considered focus on formal legal systems alone, excluding customary laws and other informal legal orders that regulated the lives of people in various countries.³⁰ However, as rightly observed by Davis and Trebilcock, a lot of the critique was not about whether or not legal reform was feasible or whether law had the potential to promote development, but rather about the appropriate programme of legal reforms pursued to engender development.³¹

3.1.3 Approach to Corruption

Owing to the instrumentality role ascribed to law essentially towards economic ends, the scholarship and policies furthered by the law and development field during this moment did not consider serious social and democratic legal institutions. It also failed to engage with other critical issues that may have a negative effect on the goal to achieve economic development. One of the most significant of such issues was corruption. The prevailing situation created by the institutional framework of the moment granted a lot of discretion and power to public officials in terms of regulating the political economy of countries. Despite this, very little or no regard was given to

²⁹ Brian Z. Tamanaha, 'The Primacy of Society and the Failures of Law and Development' (2011) 44 Cornell Int'l Law Journal 209-247.

³⁰ Brian Z. Tamanaha, 'The Lessons of Law and Development Studies' (1995) 89(2) American Journal of International Law 470-486.

³¹ Davis and Trebilcock (n 13) 28

the challenge of corruption – in terms of probable abuse of such powers - which had the singular potential of derailing development programmes and objectives.

For reasons that will be examined in the next chapter, there was hardly any research, policy framework or practical work done to deal with corruption from a development perspective during the period comprised in the first moment of law and development thought. This was so even though, at the same time, there were various studies showing the effect of corruption on development being carried out by economists and other social scientists.³²

This slow reaction was however reflective of the broader role of legal reform in the development process. As aptly expressed by Trubek and Galanter, 'lawyers were late comers to the development research game, responding more slowly than [economists and] social scientists to the demand for theoretical insights into the process of development'.³³ This exemplifies the lopsided nature of development advanced at the time with all the focus being on promoting economic development through the instrumentality of the law. Hence, within the context of the peculiar challenges of SSA, this economic growth-based denotation of development ignored most of the pressing issues that were important to ensure holistic development.³⁴ Economic development without corresponding social and political development may have enhanced economic growth but it failed in tackling challenges like corruption, considered one of the greatest barriers to development in the region.

³² See for instance Nathaniel H. Leff, 'Economic Development through Bureaucratic Corruption' (1964) 8(3) *American Behavioural Scientist* 8-14; A. O. Krueger, 'The Political Economy of the Rent-Seeking Society' (1974) 64 (3) *American Economic Review* 291-303; Susan Rose-Ackerman, 'The Economics of Corruption' (1975) 4(2) *Journal of Public Economics* 187-203.

³³ Trubek and Galanter (n 18) 1065.

³⁴ Mashood. A. Baderin, 'Law and Development in Africa: Towards a New Approach' (2011) 1 (1) *NIALS Journal of Law and Development* 1, 22.

3.2 The Moment of Law and the Neoliberal Market

3.2.1 Conception of Development: Continuation of the Economic and Indications of the Social

The definition of development during the second moment of law and development continued to focus on the economic dimensions of development, as was the case with the first moment. Following from the 1979 oil crisis, the early 1980s brought about an opportunity for development institutions to advance neoliberal policies in countries in the global South. The oil crisis had led to high levels of inflation in most countries around the world. The reaction of the United States, the United Kingdom and other major economies was to tighten monetary policy by mainly increasing interest rates. Since most of the bank loans to countries in SSA at the time were based on floating interest rates, an inevitable outcome of this was that these countries were no longer able to keep with their debt repayment obligations to their commercial lenders.³⁵

Between 1981 and 1983, about eleven countries in the region, including Nigeria had defaulted on their obligations.³⁶ With similar defaults in other regions of the world like South America, there was need to find a solution to the debt crisis. Consequently, the IMF and the World Bank stepped in to restructure the debt of the countries in default by lending them money to help them repay their debts. This was conditional on the

³⁵ Moyo (n 1) 18.

³⁶ These countries were Zambia, Angola, Cameroon, Tanzania, Nigeria, Niger, Mozambique, Gambia, Congo, Ivory Coast and Gabon. See Frederico Sturzenegger and Jeromin Zettelmeyer, *Debt Defaults and Lessons from a Decade of Crises* (MIT Press 2007) 3-30.

countries adjusting the structure of their economies to encourage greater trade liberalisation, privatisation, reducing price rigidities and implementing other neoliberal policies. The pursuit of these policies meant that the attention of countries in the region became largely about achieving economic stability and then growth. Social concerns had little place in the ensuing package of policies for development that were implemented through this process. According to Rittich, social issues of development 'were seen as not only extraneous to but sometimes in conflict with the pursuit of economic development'.³⁷

The economic paradigm of development therefore persisted for most of the second moment of law and development. The defining departure between this moment and the previous was however the transposition of the state with the market as the main driver of economic development. This was the case until the latter stages of the 1990s when indications for the mainstreaming of social concerns in development started taking hold. And by the turn of the century a whole new paradigm of development had evolved, with social development a central component.

It is important to establish, at this point, what the social dimension of development entails and the context in which it is used in this work. The social conception of development encompasses a broad range of issues. It is often understood to mean development in all non-economic sectors of society. According to the United Nations Agenda for Development, social development includes development in health, education and training, housing and shelter, water and sanitation, transparent,

³⁷ Rittich (n 4) 203.

representative and accountable governance, popular participation, rule of law, civil peace, equity and equality and human rights, amongst others.³⁸

This facet of development is variously referred to as socio-political development, socio-legal development, second generation reforms or the post-Washington Consensus.³⁹ In contrast to the economic conception of development, the use of social development here refers to the political, social and legal spheres, amongst others. This is not intended to trivialise the importance of discussing the meaning of development in each of these areas which are all important. Rather, it is in keeping with the general trend in development discourse of considering development in economic terms in comparison and contrast with development in other areas that are often referred to simply as the 'the social'.⁴⁰

Prior to the mainstreaming of social development around the turn of the century, the idea and need to define development with less emphasis on the economic growth had featured in development literature and policy documents of some international development organizations like the United Nations. Seers opined, back in 1970 that the most significant questions to ask when determining a country's development are: What has been happening to poverty? What has been happening to unemployment? What has been happening to inequality? He concluded that it is the increase or decrease of the levels of these three central problems in society that is the actual measure of development, irrespective of whether per capita income had doubled within a period.⁴¹

³⁸ United Nations, *The United Nations Agenda for Development: Development for All* (New York 1997)

³⁹ Rittich (n 4) 203-204.

⁴⁰ *ibid.*

⁴¹ Seers (n 3) 5.

The apparent delay in the mainstreaming of the 'social' in the light of such long-standing references to it can be attributed to the sharp distinction that existed between social and economic concerns.⁴² Whilst the United Nations and some NGOs continued to push the social agenda long before and into the 1990s, IFIs like the World Bank and the IMF concentrated on the economy; considering social concerns as mostly political and therefore beyond their development mandate. It was also believed that economic development would have the impact of automatically satisfying social needs. A few events in the 1990s however led to indications of the 'social' in the work of IFIs and thereby provided inroads for the convergence of both sides, eventually leading to the mainstreaming of social development at the turn of the century.

Amongst these factors was the East Asian financial crisis of 1990s. Akin to the Latin American debt crisis two decades earlier - that eroded faith in state-led development models - the East Asia crisis that began in 1997⁴³ led to a re-questioning of a purely economic conception of development and steadfast trust in the markets as the main driver of development. Another factor was the obvious failure of the neoliberal policies of the Washington Consensus to stimulate growth in most of the countries in which they were implemented, especially in SSA.⁴⁴ A significant indication of this was the increased poverty in most countries in the region during the period of implementation

⁴² Rittich (n 4) 203.

⁴³ Steven Radelet and Jeffrey Sachs, 'The Onset of the East Asian Financial Crisis' in Paul Kraugman (ed.) *The Currency Crisis* (University of Chicago Press 2000) 105-161.

⁴⁴ Sayre P. Schatz, 'Structural Adjustment in Africa: A Failing Grade So Far' (1994) 32(4) *The Journal of Modern African Studies* 679-692; Fantu Cheru, *The Silent Revolution in Africa: Debt, Development and Democracy* (Zed Books 1989); William Easterly, 'The Lost Decades; Explaining Developing Countries' Stagnation in Spite of Policy Reform 1980-1998' (2001) 6(2) *Journal of Economic Growth* 135-157.

of structural adjustment. This heralded calls to move social concerns from the periphery to a central place in the development process.⁴⁵

A third factor, as mentioned earlier, was the alternative narrative from the United Nations or other IDIs that emphasised social issues in development. The work of United Nations agencies like UNDP played an important role in the reconceptualisation of development beyond the 'economic'. The publication, by the agency, of the Human Development Report from 1990 drew attention to the social component of development. Issues like human security, gender, poverty, democracy and human rights, which were not central to the prevailing economic conception of development, became central themes of the annual publication by the Agency. Whilst it may seem logical to assume that this broader conception of development ultimately led to the consideration of the issue of corruption in the context of development and how to deal with it, this was not the case. The origin of the global anticorruption movement lies elsewhere. This will be discussed in chapter six below. The role of law in the second moment is considered next.

3.2.2 Law in Aid of the Neoliberal Market

The second moment of law and development is recognised for being largely market-centric and driven by neo-liberal ideas about development. Here, law was used to limit the intervention of the state in the economy in favour of promoting a controlling

⁴⁵ Morag Goodwin and Kate Rose-Sender, 'Linking Corruption and Human Rights: An Unwelcome Addition to the Development Discourse' in Martin Boersma and Hans Nelen (eds) *Corruption and Human Rights: Interdisciplinary Perspectives* (Intersentia 2010) 222.

role for the market instead.⁴⁶ In line with the concept of free markets, the policies pursued during this period - which can be regarded as loosely commencing from the late 1970s to the early 1990s - included privatization, deregulation, fiscal discipline and liberalization. Trubek, in summarising aptly, the role of law in advancing economic development during this era, noted that:

*This perspective assumes that market institutions are necessary for economic growth, and sees modern law as essential to the creation and maintenance of markets. The emphasis here is on modern law's predictability as a set of universal rules uniformly applied. As a result of such predictability, modern law encourages men to engage in new forms of economic activity and guarantees that the fruits of this activity will be protected. Law thus . . . assures the individual that his decisions will be enforced by state authority, [and] his acquisitions protected from the depredations of others. Through institutions such as contract and private property rights, modern law promotes development and hence economic development.*⁴⁷

This pro-neoliberalism shift involved a set of development policy prescriptions promoted by the Washington-based IFIs, namely the IMF, World Bank and the economic agencies of the US government.⁴⁸ They were collectively termed the 'Washington Consensus' by English economist John Williamson in 1989.⁴⁹ The

⁴⁶ Baderin (n 34) 12.

⁴⁷ David.M. Trubek, 'Toward a Social Theory of Law: An Essay on the Study of Law and Development' (1972) 82 (1) The Yale Law Journal 1.

⁴⁸ See generally Joseph Stiglitz, *Globalization and its Discontents* (New York: W.W. Norton, 2002).

⁴⁹ John Williamson, *Latin American Adjustment: How Much Has Happened* (Institute for International Economics 1990).

development of legal institutions for the protection of property and contractual rights was seen as particularly essential to economic development.⁵⁰ This was so as to provide security, certainty and predictability for private sector actors in the economy.

There was therefore a practical reversal of the hitherto established development model by radically altering the role of the state in the development process. Legal instruments such as statutes and decrees that created the regimes of import substitution, government development plans and general interventionism, were now used for dismantling those systems.⁵¹ A market-oriented variant of rule of law was pursued with private law becoming a principal tool for limiting state interference in the economy.⁵²

According to Sherman, with this new direction arose also the need for entirely new legal structures to allow the market to function freely, and especially to protect participants in the market in areas like finance and banking, corporate/commercial law, intellectual property, insurance, privatisation, trade and foreign investment, among others.⁵³ There was an apparent fresh impetus for the modernisation of the legal systems of countries in SSA. Explaining the justification for this 'modern' law, David Apter declared:

Modern law promotes economic development because a regime of contract and other laws facilitates economic planning. It promotes political development because it restrains arbitrary

⁵⁰ Douglas C. North, 'Institutions' (1991) 5(1) *The Journal of Economic Perspectives* 97-112. See also Douglass C. North, *Institutions, Institutional Change and Economic Performance* (CUP 1990)

⁵¹ Goodwin and Rose-Sender (n 45) 224.

⁵² John Ohnesorge, 'Developing Development Theory: Law and Development Orthodoxy and the Northeast Asian Experience' (2007) 28 *University of Pennsylvania Journal of International Law* 219, 247.

⁵³ Sherman (n 15) 1265

*state action and allows the state to derive legitimacy through rational rules and principles. Thus, the evolution towards progressively higher states of economic development should result in the reproduction of political, social, and legal institutions akin to those that exist in the West, creating not just a free market economic system but also the foundations of liberal democracy.*⁵⁴

With effective enforcement being pivotal to these new rule-based systems, rule of law scholars and practitioners during this moment of law and development were also particularly concerned with effective adjudication and judicial independence.⁵⁵

Sceptics of neoliberalism have pointed out that the 'rule of law' theorisation upon which it is built is difficult to reconcile with the fact that most countries during this period, especially in Asia, achieved considerable economic development even though they had legal systems that did not meet the prerequisites advanced by neoliberal theories.⁵⁶ The most obvious example of these was China.⁵⁷ The country achieved considerable economic growth despite much of the productive property in the country being collectively owned, with informal networks of relations among business people treated as more important to transactions than contract law.⁵⁸ This has given rise to claims that 'Asian style neo-mercantilism and economic nationalism' may prove to be more suited to rapid economic development at the earlier stages of a country's

⁵⁴ David E. Apter, *Rethinking Development: Modernization, Dependency, and Postmodern Politics* (SAGE Publications 1987) as quoted by Cao (n 17) 549.

⁵⁵ *ibid*

⁵⁶ Ohnesorge (n 52) 219-308.

⁵⁷ Mark Beeson and Iyanatul Islam, 'Neoliberalism and East Asia: Resisting the Washington Consensus' (2005) 41(2) *The Journal of Development Studies* 197-219.

⁵⁸ See Tom Ginsburg, 'Does Law Matter for Economic Development? Evidence from East Asia' (2000) 34 *Law and Society Rev* 829-856.

development than promoting market capitalism through law.⁵⁹ Such policy emphasises state control of natural resources, state run investment funds, and export-oriented production pursued together with import barriers and protection of national industries. Moreover, the prescriptions of neoliberal ideology did not necessarily enhance the ailing economic and political institutions in countries in SSA into the mirror images of their western counterparts, as was anticipated.⁶⁰

3.2.3 Approach to Corruption

The construction of a neoliberal rule of law during this moment was viewed as essential for development because systems of state regulation and intervention in the previous era of law and development were viewed as inefficient, stagnant and corrupt.⁶¹ Despite this foundation, very little was done to deal with corruption during this period. Such anti-corruption initiatives that existed were largely limited to the judicial arm of government. Addressing corruption directly with respect to its negative effect on development was not a central goal of rule of law programmes during this moment. Hence programmes against corruption were focused on curbing abuse of discretion within the judiciary by formalising procedures, modernising courts, professionalising

⁵⁹ Sherman (n 15) 1264.

⁶⁰ Cao (n 17) 550.

⁶¹ *ibid.*

judgeship and strengthening the independence of the judiciary as an institution of the court system.⁶²

These initiatives were geared towards achieving the formalisation and transparency of the legal system, considered a prerequisite for the security of private actors in the economy. They focused on economic issues such as bribes and political exchanges, procedural irregularities like delays and substantive concerns dealing with legal interpretations and judicial decisions.⁶³

IDIs like the World Bank therefore only engaged in anticorruption work indirectly through programmes of the nature mentioned above. This was done in the hopes that enhancing the transparency and efficiency of the judiciary would contribute to the viability of their market mechanisms and enhance economic development. Writing on the importance of the focus on the judiciary, Gonzalez de Asis noted:

Absence of meritocracy along with pervasive politicisation undermines professionalism and fuels corruption: decisions on recruitment, appointments and promotion of judges tend to be arbitrary. . . Sometimes judges are appointed by different political parties or as a result of delicate bargains struck by them or even amongst factions within parties . . . The deference of judges to their political godfathers can be reflected, for example, in the acceptance of suggested legal case [sic] leading to pre-determined decisions or the speeding up (or slowing down) of certain cases. Hence, the adoption of predictable procedures and clearer rules to administer

⁶² Maria Gonzalez de Asis, *Anticorruption Reform in Rule of Law Programs* (World Bank 2006) 1.

⁶³ *ibid.*

*judicial careers, along with incentive structures more prone to preserve the independence of the judiciary, such as promotions, clarity in career paths and unbiased rotations were seen as effective means for decreasing potential political interference.*⁶⁴

This strategy has however been criticised for a number of reasons. Firstly, the strategy concentrated basically on professionalisation and formalisation of the judiciary without taking the effects of informal relationships into cognisance in its approach to anticorruption. Rule of law reformers focused on redesigning the appointment procedures of judges away from predominantly political appointment procedures to more independent mechanisms regulated by 'judicial councils' comprised of judges, bar associations, members of parliament and renowned scholars. However, as Linn Hammergren highlights - based on his research on the effect of judicial councils in Latin America - such institutional changes have had limited impact in insulating judges from the influence of other branches of government. The underlying challenges of patronage and clientelism tended to endure. The situation was worsened by the lack of political will to empower the judicial councils to function independently as envisaged by their mandate.⁶⁵

Furthermore, Gonzalez de Asis refers to the nature of the composition and limited powers granted to these judicial councils as a major impediment to their effectiveness. In some countries, the composition included members of parliament who, as politicians, often protected their political interest. In other cases, the councils were not empowered to administer the budget of the judiciary. This impeded their

⁶⁴ Ibid 6.

⁶⁵ Linn Hammergren, 'Do Councils Further Judicial Reform? Lessons from Latin America' (2002) Carnegie Endowment for International Peace, Rule of Law Series, Working Paper 28 <https://media.law.wisc.edu/s/c_8/zfmfw/lhdjc.pdf> accessed 28 March 2014.

independence and subjected them to whims of other arms of government.⁶⁶ This notwithstanding, the assigning of the power of appointment of judges to a singular independent body was considered a positive step towards achieving transparency in the judiciary.

Apart from dealing with possible external influences on the judiciary, attention was also dedicated to ensuring accountability within the judiciary itself. Rule of law reformers were deeply concerned with how much the independence of the judiciary could be insulating it from accountability and control. This was more so in cases where the judiciary exercised control over its budget. There were also issues with the overbearing influence of senior judges over lower-rank judges. These concerned matters like evaluating their performance for purposes of promotion, assignments and salary progression.⁶⁷ Other factors considered essential to ensuring accountability and transparency in the judiciary included proper case management, adherence to procedural law, use of technology for efficient record-keeping and remuneration for judges.

Therefore, the neoliberal law and development doctrine with a primary focus on the market showed little concern for the role of law as a guarantor for political and civil rights or as a protector of the weak and the disadvantaged in society.⁶⁸ This was the case when the role of law in that regard would have had the effect of addressing the issue of corruption especially of the political and systematic kind.

⁶⁶ Gonzalez De Asis (n 62) 4-6.

⁶⁷ *ibid* 11.

⁶⁸ Trubek and Santos (n 23) 2.

Before examining the reasons for the indifferent attitude to corruption during the second moment of law and development – as was the case in the first - the next section looks at how corruption was tackled in Nigeria during both periods.

3.3 Anti-Corruption Efforts in Nigeria in the First and Second Moments of Law and Development

The first and second moments of law and development coincided with a turbulent and eventful period in Nigeria's history. It covers the time from the independence of the country from British rule in 1960 to arguably the most corrupt regime that ruled the country, led by the military dictator General Sani Abacha, which ended in 1998.⁶⁹ Following his death on 8 June 1998, his successor General Abdulsalami Abubakar led the country through a period of transition to democratic rule culminating in the election of Olusegun Obasanjo as President of the Fourth Republic⁷⁰ of the country in May 1999. In stark contrast to what was hitherto the norm, by this time there was marked attention to corruption at the global level. This was reflected in the country with the

⁶⁹ This covers a period of 39 years. In that time, the country was under democratic rule for a total of ten years (1960 - 1966 and 1979-1983). It was under military rule for the remaining 29 years (1966-1979 and 1983-1999), with a total of seven different military rulers during that timeframe. See Toyin Falola, *The History of Nigeria* (Greenwood 1999).

⁷⁰ Nigeria is considered to have had four republics, in contrast to the periods to time the country was under military rule. The First Republic was from 1960 to 1966, the Second Republic from 1979-1983, the Third Republic of 1993 and the Fourth Republic from 1999 to date.

It is worth noting that the Third Republic never came into full operation as the military leader at the time, Gen. Ibrahim Babangida annulled the presidential election of 12 June 1993 that was widely believed to have been won by Chief Moshood Abiola. However, the Third Republic is part of Nigeria's political history because before the annulled presidential election, there had been regional elections that had brought governors and state legislatures into operation for over a year. The cancellation of the presidential election eventually culminated in the military continuing in office under Gen. Sani Abacha. See Toyin Falola and Matthew M. Heaton, *A History of Nigeria* (CUP 2008)

setting up of a broad range of legal, institutional and other supporting frameworks aimed at addressing corruption.⁷¹ These frameworks and their ramifications are discussed later as part of the approach to corruption in the current moment of the new developmentalism.

There are three principal factors to be noted in the approach to corruption in Nigeria during the first and second moments of law and development. First, there is a consensus that there was widespread corruption during this period that negatively impacted development in the country in all ramifications - economic, social, political and otherwise.⁷² Secondly, IDIs paid little attention to corruption in its policies and practices in the country. Finally, regardless of the lack of attention to corruption by IDIs, there were efforts made by different regimes in the country in the period in question to deal with corruption.

3.3.1 The Reality of Corruption in the Country

On gaining independence in 1960, Nigeria first practiced a parliamentary system of government with Sir Abubakar Tafawa Balewa as Prime Minister and Nnamdi Azikiwe as President. The evident hope and promise of the new country was however cut short after just six years by a coup d'état on 15 January 1966. The young middle-rank

⁷¹ Osita Nnamani Ogbu, 'Combating Corruption in Nigeria: A Critical Appraisal of the Laws, Institutions and the Political Will' (2010) 14(1) *Annual Survey of International and Comparative Law* 99-149.

⁷² Ijeoma Opara, 'Nigerian Anti-Corruption Initiatives' (2007) 6 *Journal of Int'l Business and Law* 65-93.

army officers who took over power predicated their actions mainly on the widespread corruption of political leaders.⁷³

In fact, even before the country gained independence, there were reports of officials abusing their office for personal enrichment.⁷⁴ For instance, in 1956 an enquiry by a special tribunal, the Foster-Sutton Tribunal found that Nnamdi Azikiwe who was then Premier of the Eastern Region of the country used his position to influence government policy in favour of the African Continental Bank, an institution in which he had a major stake.⁷⁵ Specifically, the report noted how Azikiwe used his influence to get public funding for the Bank with the claim of stimulating economic development in the region. The Bank subsequently gave out loans at lower interest rates and over extended periods of time to Zik Group of Companies, owned by Azikiwe.⁷⁶

Corruption became worse and centralised after independence. Federal Ministers were seen in possession of wealth not justified by their legal means. There were allegations of ministers using their influence to secure contracts for companies owned by them. This was often done with a sense of impunity and without remorse. For instance, the Minister of Aviation at the time K.O Mbadiwe was once asked how he had gotten the money used in building a mansion in his hometown. His reportedly replied, 'From sources known and unknown'.⁷⁷ In response to a similar question, his counterpart in the Ministry of Finance Chief Festus Sam Okotie-Eboh, using a biblical reference, was

⁷³ Olurungbemi Simeon Toyin, 'The Impact of Military Coup D'etat on Political Development in Nigeria' (2015) 6(10) Int'l Journal of Business and Social Science 194-202.

⁷⁴ Bernard Storey, 'Report of the Commission of Inquiry into the Administration of the Lagos Town Council, Nigeria' (Government Printer 1953)

⁷⁵ Robert L. Sklar, *Nigerian Political Parties: Power in an Emergent Nation* (Africa World Press Inc 2004) 143.

⁷⁶ *ibid.*

⁷⁷ Rino Okonkwo, 'Corruption in Nigeria: A Historical Perspective (1947-2002)' (*Africa Unchained* 6 September 2007) <<http://africaunchained.blogspot.co.uk/2007/09/corruption-in-nigeria-historical.html>> accessed 14 December 2016.

quoted as saying, 'To those that have, more shall be given. From those that do not have, shall be taken even the little they have.'⁷⁸ The widespread corruption in the public sector affected so many parastatals, including the Nigeria Railway Corporation, Nigeria Ports Authority and Nigeria Airways.⁷⁹ It was therefore unfortunate, albeit not surprising that there was jubilation when the government was overthrown by the military. The military pointed to the widespread corruption as justification for their actions.⁸⁰ In his first radio broadcast, the leader of the coup Major Chukwuma Kaduna Nzeogwu remarked:

*'Our enemies are the political profiteers, the swindlers, the men in high and low places that seek bribes and demand 10 per cent; those that seek to keep the country divided permanently so that they can remain in office as ministers or VIPs at least, the tribalist and the nepotists, those that make the country big for nothing before international circles, those that have corrupted our society and put the Nigerian political calendar back by their words and deeds'*⁸¹

Whilst it would be impossible to provide a chronological narrative of the incidence of corruption in the country during successive military and civilian governments, a few more major events that demonstrate the incidence of corruption during this period will be discussed. In 1975, a probe into corruption instituted by the six months-long military regime of General Murtala Mohammed found that ten out of the twelve military state

⁷⁸ *ibid.*

⁷⁹ Ejovi Austine, Mgbonyebi Voke Charles and Akpokighe Okemute Raymond, 'Corruption in Nigeria: A Historical Perspective' (2013) 3(16) *Research on Humanities and Social Science* 19-26.

⁸⁰ Fredrick C. Dummar, 'The History of the Nigerian Army and the Implications for the Future of Nigeria' (Masters Thesis, U.S Army Command and General Staff College 2002) 21.

⁸¹ Nigerian History Channel, 'Nigeria's Great Speeches' <<https://maxsiollun.wordpress.com/great-speeches-in-nigerias-history/>> accessed 16 December 2016.

governors under the previous regime of General Yakubu Gowon were guilty of corruption. They were duly dismissed with ignominy and forced to give up their ill-acquired wealth.⁸² Another enquiry in the same period found that there were widespread cases of contract inflation and manipulation of procurement processes in government ministries and parastatals. One such case involved the Ministry of Defence in what came to be known as the 'Cement Armada' scandal. The Ministry had ordered 16 million metric tons of cement at a cost of 557 million Naira for the renovation and building of military installations around the country. Due to congestion at the Lagos harbour, the ships carrying the cement were unable to offload their cargo. This led to the Federal Government incurring substantial demurrage charges and raised suspicion on the overall purpose of the contract and the procedure for their procurement. The inquiry revealed that the Ministry had inflated the contract for the cement by almost 100 per cent from 40 dollars per ton to 75 dollars.⁸³ Moreover, to increase the margin of its loot, the Ministry of Defence was found to have ordered 16 million metric tons of cement when it needed only 2.9 million metric tons that should have cost the government just 52 million Naira.⁸⁴

Akin to the end of the First Republic, Nigeria's Second Republic from 1979 to 1983 was also brought to an abrupt end by the military chiefly on grounds of corruption.⁸⁵ It is claimed that in the four years of the Second Republic under Shehu Shagari, over 16

⁸² Michael O. Maduagwu, 'Nigeria in Search of Political Culture: The Political Class, Corruption and Democratisation in Nigeria' in Alex Gboyega (ed), *Corruption and Democratisation in Nigeria* (Agbo Areo Publishers 1996) 3-12.

⁸³ M. O. Afolabi, 'A Bibliography of the Nigerian Governments' Commissions of Inquiry Reports and Accompanying White Papers From 1920 to 1986' (1993) 20 *Government Publications Review* 297-358.

⁸⁴ *ibid.*

⁸⁵ Temitayo Isaac Odeyemi, 'The Impact of Political Leadership and Corruption on Nigeria's Development since Independence' (2014) 7(5) *Journal of Sustainable Development* 240-253, 250.

billion dollars of oil revenues were unaccounted for.⁸⁶ In justifying the incursion of the military, Major-General Muhammadu Buhari pointed out that:

“While corruption and indiscipline has been associated with our state of under-development, these two evils in our body politic have attained unprecedented height in the past few years. The corrupt, inept and insensitive leadership in the last four years have been the source of immorality and impropriety in our society. Since what happens in any society is largely a reflection of the leadership of that society, we deplore corruption in all its facets. This government will not tolerate kickbacks, inflation of contracts and over-invoicing of imports etc. Nor will it condone forgery, fraud, embezzlement, misuse and abuse of office and illegal dealings in foreign exchange and smuggling”⁸⁷

The regime of Buhari – who is also the current democratically elected president - was however cut short less than two years later in 1985 by General Ibrahim Babangida in a bloodless coup. The leadership of Babangida and his substantive military successor General Abacha were arguably the most corrupt in the history of the country.⁸⁸ The former who ruled the country from 1985 to 1993 is considered to have institutionalised corruption in a manner never experienced. He is seen as having introduced a regime

⁸⁶ Leon Dash, 'Mysterious Fires Plague Nigerian Investigations' *The Washington Post* (Washington, D.C 27 February 1983) <https://www.washingtonpost.com/archive/politics/1983/02/27/mysterious-fires-plague-nigerian-investigations/51b50b62-392f-4455-acbd-5d713364dbc0/?utm_term=.0fb864272f53> accessed 14 December 2016.

⁸⁷ Nigerian History Channel (n 81).

⁸⁸ Ibidolapo Bolu, 'The Anti-Corruption Legal Framework and its Effect on Nigeria's Development' (SPA Ajibade & Co, Lagos, Nigeria) 4 <<http://www.spaaajibade.com/resources/wp-content/uploads/2016/04/DBolu.THE-ANTI-CORRUPTION-LEGAL-FRAMEWORK-DRAFT.pdf>> accessed 12 December 2016.

of impunity by releasing from prison individuals previously detained or convicted of corruption. The extent of corruption under Babangida's regime was detailed in the report of a panel of enquiry, the Okigbo Panel Report, which concluded its work in 1994. It found that the government had mismanaged the sum of 12.4 billion dollars.⁸⁹ The amount consisted of accumulated oil revenues that accrued to the country between 1988 and 1993. These revenues were unscrupulously diverted through various high-profile projects and other fiscal mechanisms put in place by the government that never achieved their stated purposes.⁹⁰ For instance, the panel found that a Stabilisation Account that was set up to receive the windfall of oil proceeds in the Gulf War had a balance of only 206 million dollars in June 1994 even though billions of dollars from oil revenues were supposed to have been deposited in the account.⁹¹

The high level of political corruption under Babangida's regime affected a wide range of government departments including the Nigeria Police Force, Customs, Inland Revenue Department, National Youth Service Corps, Nigerian National Petroleum Company and Nigerian Telecommunications Limited.⁹²

This trend of corruption continued and arguably got worse under General Abacha's regime from 1993 to 1998 when Nigeria was consistently ranked amongst the most corrupt countries in the world on Transparency International's CPI.⁹³ At the end of

⁸⁹ Yusuf Alli, 'Okigbo Report Indicts IBB, Two Others' *The Punch* (Lagos, 16 May 2005) <<https://www.laits.utexas.edu/africa/ads/698.html>> accessed 14 December 2016.

⁹⁰ Editorial, 'The Missing Okigbo Panel Report' *Nigerian Muse* (Lagos, 28 December 2006) <http://www.nigerianmuse.com/nigeriawatch/okigbo/?u=Punch_missing_Okigbo_report.htm> accessed 14 December 2016.

⁹¹ *ibid.*

⁹² Michael M. Ogbeidi, 'Political Leadership and Corruption in Nigeria Since 1960: A Socio-Economic Analysis' (2012) 1(2) *Journal of Nigerian Studies* 1-23, 15.

⁹³ Transparency International. 'Corruption Perceptions Index' <<http://www.transparency.org/research/cpi/overview>> accessed 14 December 2016. In 1996 and 1997, Nigeria was ranked the most corrupt country on the index.

his tenure, it was estimated that Abacha, his family members and associates had embezzled public funds estimated to be up to five billion dollars.⁹⁴ These sums were kept in foreign banks in countries such as the United States, United Kingdom, Switzerland, Luxembourg and Liechtenstein. Since his death in 1998, they are being repatriated back to the country in tranches at the behest of the Nigerian government.⁹⁵

Corruption has therefore been a constant feature in Nigeria's economic and political reality since independence.⁹⁶ It has been perpetrated both at the national and regional levels of government and under military and civilian regimes. This was the case through the period of the first and second moments of law and development.

3.3.2 The Lack of Attention to Corruption in the Country by International Development Institutions (IDIs).

Despite the obvious nature of it, there was a palpable disregard for corruption in the policies and activities of IDIs in the country during the period in question. The significance of this is important considering the impact of corruption on the country's development. Apart from the impact of the massive looting of public revenues on development, corruption was also having a direct effect on the use of funds provided

⁹⁴ International Centre for Asset Recovery, 'Selected Case(s): Sani Abacha' <https://forum.assetrecovery.org/asset_recovery/cases> accessed 14 December 2015.

⁹⁵ Between 2005 and 2006 for instance, Switzerland repatriated sums amounting to a total of \$505.5m back to the Federal Government of Nigeria. In June 2014, a further \$227m was returned by Liechtenstein. See BBC News, 'Abacha Loot: Nigeria to get \$227m from Liechtenstein' (London, 19 June 2014) <<http://www.bbc.co.uk/news/world-africa-27926100>> accessed 21 October 2015.

⁹⁶ Oluwaeun Bamidele, Azeez O. Olaniyan and Bonnie Ayodele, 'Seized by Sleaze: The Siege of Corruption and a Search for Workable Options in Nigeria' (2015) 90(1) Int'l social Science Review 16.

by development institutions for various projects. This notwithstanding, there were no positive statements or actions on the part of especially IFIs on the impact of corruption or on ways of dealing with the problem. This is a fact that becomes obvious from a search of the database of the World Bank for projects implemented in Nigeria. It reveals that between 1960 and the commencement of the current democratic era in 1999, there is no single project specifically intended to deal with corruption.⁹⁷ In fact there was only one governance-related project in that period that may be considered as having a potential impact on reducing corruption. This was the Economic Management Technical Assistance Project initiated in 1992 in accordance with the economic governance focus of the Bank in the early 1990s.⁹⁸

At the United Nations, efforts to introduce corruption onto the international development agenda did not make much progress either. A 1975 General Assembly Resolution on measures against corrupt practices of transnational and other corporations provided no framework or clear-cut policy on corruption.⁹⁹ It simply called on home and host states to cooperate in taking action to prevent such practices.¹⁰⁰ Being a resolution with no binding effect, its impact was negligible. A more purposeful resolution that proposed particular international measures met with resistance, and a Code of Conduct put forward by the Economic and Social Council (ECOSOC) to tackle the challenge of transnational illicit payments through an international agreement was

⁹⁷ Search carried out on official website of the World Bank <<http://www.worldbank.org/>>. Data for projects in Nigeria available at <<http://projects.worldbank.org/search?lang=en&searchTerm=nigeria%20>> accessed 16 December 2016.

⁹⁸ World Bank, 'Projects and Operations: Economic Management Technical Assistance Project' <<http://projects.worldbank.org/P002167/economic-management-technical-assistance-project?lang=en>> accessed 16 December 2016.

⁹⁹ UNGA Res 3514 (XXX) (15 December 1975) UN Doc A/RES/3514.

¹⁰⁰ *ibid.*

rejected by the General Assembly in 1980.¹⁰¹ In any case, even though the success of these initiatives would have had an impact in bringing corruption to a central place in development at the time, their focus was on transnational economic forms of corruption. This means that they would have made little difference in tackling political, bureaucratic and other forms of corruption that were predominant in countries in SSA.

A factor worth considering in this respect is the role of the development policies pursued at the time. The state-centric model of development advanced in the first moment of law and development bestowed considerable power on government officials. As a newly independent country without strong institutions to check the use of such powers, it was easy for such public officials to abuse their positions with impunity. This was exactly what happened, with the military having to step in on various occasions in the absence of strong democratic institutions to check such abuse of powers, as was the case in countries in the global North on which the policy was modelled.

Furthermore, the change to neoliberal policies in the second moment of law and development provided further opportunities for corruption to thrive. The policy of privatisation for instance, which is a major step in the transition of countries from state-led development to market economies provides enormous opportunities for state officials to manipulate the process of selling state assets in a manner that furthers their personal gains.¹⁰²

¹⁰¹ Tara Polzer, 'Corruption: Deconstructing the World Bank Discourse' (2001) Development Studies Institute Working Paper 01-18, 7-8.

<<http://www.lse.ac.uk/internationalDevelopment/pdf/WP/WP18.pdf>> accessed 1 February 2017).

¹⁰² Daniel Kauffmann and Paul Siegelbaum, 'Privatisation and Corruption in Transition Economies' (1996) 50(2) Journal of International Affairs 419-458.

Despite this, the institutions promoting these models and policies disregarded corruption, allowing it to thrive in the country. There was therefore an obvious mismatch between the reality on the ground and the approach of the law and development movement. The reasons for this are discussed in the next chapter. The next section looks at efforts taken by various regimes to tackle corruption in the country during this period.

3.3.3 Local Efforts to Address Corruption

The lack of attention to corruption in international development did not preclude action at the local level against corruption. A considerable number of initiatives were undertaken by successive governments in Nigeria to deal with corruption. The conception and implementation of these programmes were different, depending on the will and objective of the leader under whose government they were initiated. This also had a concomitant effect on the prospect of each initiative.

Despite these differences, there are certain general factors that applied to all of them. The first is that anticorruption initiatives were often ad hoc and short term. Even though corruption was provided for as a crime under the law,¹⁰³ there were hardly any records of routine prosecutions by designated prosecutorial authorities under the

¹⁰³ Corruption has been an offence in Nigeria since before independence. It is thus prescribed under Chapter 12 of the first version of the Criminal Code Act of 1916, Cap C38 Laws of the Federation of Nigeria 2004. It has remained so until date.

See also Chapter 10 of the Penal Code Act, Cap P3 Laws of the Federation of Nigeria 2004, which applies to the northern part of the country.

Criminal Code or Penal Code.¹⁰⁴ Each government dealt with corruption with reference to specific scandals, groups of public officials or a specific administration. This often involved constituting tribunals, special panels or commissions of enquiry and acting on their findings and recommendations.

The first such major enquiry into corruption post-independence took place in 1966 following the overthrow of the First Republic by the General Aguiyi Ironsi-led military coup. Having taken power mainly as a result of widespread corruption, the government instituted a series of commissions of enquiries into the activities of public officials in various government departments including the Nigeria Railway Corporation, Nigeria Airways and the Nigeria Ports Authority.¹⁰⁵ The findings revealed how government ministers used their influence to secure contracts for their private companies and also disregarded laid down procurement procedures in the award of public contracts.¹⁰⁶ Following the inquiries, those public officials found culpable were subjected to detention by the military government.

The subsequent regime of General Yakubu Gowon did very little to tackle corruption and is considered to have rather encouraged corruption by, amongst other things, freeing politicians detained for corruption under the previous regime. Although it established a special anticorruption force - the 'X Squad' - to deal with corruption, the investigations of the special force never led any serious prosecutions or punishments.¹⁰⁷ This was often blamed on Gowon's conciliatory approach to governance and his overall conservative nature.¹⁰⁸ His government was therefore

¹⁰⁴ Ogbu (n 71) 5.

¹⁰⁵ Ogbeidi (n 92) 7.

¹⁰⁶ Okonkwo (n 77).

¹⁰⁷ Jude Uddoh, *Corruption and Nigerian Foreign Policy (1999-2007)* (AuthorHouse Indiana 2016) 55.

¹⁰⁸ *ibid.*

recognised less for tackling corruption and more for overseeing the mismanagement of the unprecedented revenues that accrued to the state from elevated oil prices in the early 1970s.

Hence, the next significant ad hoc anticorruption initiative took place under the government of General Murtala Mohammed which toppled the Gowon regime. With an approach of leading by example, General Mohammed began by declaring his assets and demanded that all public officials follow suit under the Corrupt Practices Decree.¹⁰⁹ Other initiatives of the regime include the establishment of the Assets Investigation Panel, Corrupt Practices Investigation Bureau and the Special Anti-Corruption Tribunal.¹¹⁰

Like Ironsi's regime discussed above, Mohammed instituted several probes into corruption in the previous government.¹¹¹ The most renowned of these was the probe carried out by the Federal Assets Investigation Panel of 1975. As noted earlier, it concluded that ten out of the twelve state governors under the previous regime were guilty of corruption. They were accordingly dismissed from the military and forced to forfeit their ill-gotten wealth worth over ten million Naira to the State.¹¹² Similarly, the Belgore Commission of Inquiry set up by the Murtala regime to investigate the 'Cement Armada' scandal revealed serious incidence of corruption in the Ministry of Defence under the previous regime and provided answers to a case of corruption that brought international embarrassment to the country.

¹⁰⁹ Decree No. 38 of 1975

¹¹⁰ Emma Chukwuemeka, Barthlomew J. Ugwuanyi and Ngozi Ewuim, 'Curbing Corruption in Nigeria: The Imperatives of Good Leadership' (2012) 6(3) African Research Review 338-358.

¹¹¹ *ibid* 342.

¹¹² Maduagwu (n 82) 7.

The anticorruption initiatives of the General Murtala Mohammed era were brought to an abrupt end when he was assassinated only six months into his tenure in February 1976. His successor General Olusegun Obasanjo initiated no distinctive initiatives against corruption until 1979 when he transferred the reins of power back to a democratic government after 13 years of successive military regimes. The Second Republic under the Presidency of Shehu Shagari, described as a 'soft-spoken and mild-mannered gentleman',¹¹³ saw a resurgence of corruption. The government however, did establish the Ethical Revolution of 1981 with the objective of curbing corruption by transforming the country's national values. This ultimately turned out to be a soft measure with no identifiable accomplishment in tackling corruption. Its failure was blamed on the inability of the President to stop his ministers and other top government officials from embezzling state funds and engaging in other forms of corruption.¹¹⁴ It was this high level of corruption that ultimately led to the return of the military.

In 1983, the government was overthrown in a coup led by General Muhammadu Buhari who promised to put end to corruption and restore discipline and integrity to public life. To this end, the regime introduced its famous War Against Indiscipline in 1984 to address corruption, and to achieve a broader aim of instilling patriotism and discipline in the citizenry.¹¹⁵ Other decrees promulgated to achieve this purpose included the Public Property Decree and the Public Officers (Special Provision) Decree, all of 1984. Although the measures taken under the government recorded

¹¹³ Ogbeidi (n 92) 8; Solomon Olusoji, 'Shehu Shagari at 91: A National Hero' *This Day* (Lagos, 11 March 2016) <<http://www.thisdaylive.com/index.php/2016/03/11/shehu-shagari-at-91-a-national-hero/>> 14 December 2016.

¹¹⁴ Chukwuemeka, Ugwuanyi and Ewuim (n 110) 343.

¹¹⁵ Charas Madu Tella and Shehu Mustapha Liberty, 'Poor Leadership, Indiscipline and Corruption Undermines Peace in Northern Nigeria' (2014) 3(5) *American Journal of Social Science* 207, 211.

some notable accomplishments,¹¹⁶ they were also criticised for being draconian and violating human rights. The administration sentenced public officials found guilty of corruption to absurd prison terms some of which ranged from 100 to 340 years.¹¹⁷ The administration's extreme actions also included detaining persons suspected of corruption indefinitely without trial.¹¹⁸ It was mainly this high-handedness that led to the toppling of the Buhari administration by General Ibrahim Babangida in a bloodless coup in August 1985.

As discussed above, the regime of Babangida and that of his successor, General Sani Abacha were acknowledged for their tolerance of corruption, rather than for any actions taken to tackle corruption. This notwithstanding, a few measures were taken by both administrations on corruption. Babangida's administration coincided with the commencement of the second moment of law and development. In accordance with the neoliberal policies of the time, the regime initiated the Mass Mobilisation for Social Justice, Self-Reliance and Economic Recovery (MAMSER) in 1985. The approach adopted under the initiative was in line with the broader economic reforms of structural adjustment that were being implemented at that time. Even though the government pushed through the economic reforms, not much was done with respect to corruption under the initiative.¹¹⁹

¹¹⁶ By the end of 1984, it was reported that the various tribunals set up under the government had recovered over 112 million Naira and 688 thousand pounds from corrupt public officials. Another 346 million Naira was recovered from FEDECO alone and another 48.5 million Naira from the National Assembly. See Uddoh (n 107).

¹¹⁷ Ogbeidi (n 92) 13.

¹¹⁸ This was carried out under various draconian decrees such as Decrees Nos 20, 21 and 22 of 1984.

¹¹⁹ Basil C. Nwankwo, Stephen Ocheni and Moses Atakpa 'A Review of the Contributions of Military Regimes to Social Mobilisation in Nigeria, 1966-1996' (2012) 3(2) Journal of Arts, Science and Commerce 24-32.

On his part, General Abacha is known to have constituted various panels to probe the Nigerian Customs Service, Nigeria Ports Authority, Nigerian Airports Authority and the Central Bank of Nigeria, amongst other government agencies.¹²⁰ The most significant action against corruption took place when the administration set up a special panel of eminent Nigerians chaired by a reputable economist, late Dr Pius Okigbo to investigate the receipts and uses of the oil windfall from the Gulf War. The Okigbo Panel Report which was submitted to Abacha in September 1994 detailed how 12.4 billion dollars of oil revenue from 1988 to 1994 was mismanaged with grave cost to the development of the country. However, the report of the panel was ultimately of no consequence. It was kept secret by the government and nobody was held to account as a result of its findings. In fact, the content of the report only became public when it was leaked to the press in 2005, years after the end of both administrations.¹²¹ The concealing of the report had to do with the fact that it did not only indict the government of Babangida, but also indicted that of his successor General Sani Abacha who constituted the panel.¹²²

Apart from the above probes, the Abacha administration promulgated some commendable laws on corruption, some of which are still part of the current anticorruption legislative framework in the country. These include the Failed Banks and other Financial Institutions Decree of 1994¹²³ which dealt with acts of recklessness and corruption in commercial banks. Abacha also promulgated the Advance Fee Fraud and Other Related Offences Decree of 1995¹²⁴ to deal with the rising trend of

¹²⁰ Uddoh (n 107) 65.

¹²¹ Alli (n 89).

¹²² *ibid.*

¹²³ The current amended version of this Decree is the Failed Banks (Recovery of Debts) and Financial Malpractices in Banks Act, Cap F2, Laws of the Federation of Nigeria 2004.

¹²⁴ This has been amended by the Advance Fee Fraud and Other Related Offences Act 2006.

fraudulent schemes perpetuated by unscrupulous individuals. These schemes constituted a considerable percentage of private sector corruption in the country and remain a challenge to date. Despite these laudable initiatives, Abacha himself and his associates would go on to plunder the coffers of the country in the most despicable manner until his death in 1998.

His successor General Abdulsalami Abubakar made no significant effort towards curbing corruption. This was understandable as he committed his short one-year tenure to keeping his commitment of returning the country to democratic rule.¹²⁵ This notwithstanding, some are of the view that his tolerance for corruption in that period was discouraging.¹²⁶ He did not only fail to probe officials in the previous government that were obviously corrupt, but retained them in their positions throughout his term in office.

By the time the country returned to democratic rule in 1999, a drastic paradigm shift had taken place and corruption had become a central factor in development discourse globally. Consequently, Olusegun Obasanjo who became the first elected President of the Fourth Republic established the foundation for the present anticorruption regime.

It is worth noting that a natural outcome of the ad hoc and short-term nature of the response to corruption under the various regimes is that the strategies reflected the overall personality and leadership style of the person in office at a point in time. The draconian approach of the Buhari regime for instance, reflected the general high-handedness with which he led. This can be contrasted with the mild and tolerant

¹²⁵ Chukwuemeka, Ugwuanyi and Ewuim (n 110) 344.

¹²⁶ Victor E. Dike, *Nigeria and the Politics of Unreason: A Study of the Obasanjo Regime* (Adonis and Abbey Publishers 2003) 2-50.

approach of his predecessor Shagari, who was generally considered soft in personality and in governance.¹²⁷ The corollary of this was that anticorruption initiatives and projects were unsustainable over long periods of times. They often did not survive the administration under which they were initiated.

Furthermore, the above discussion illustrates another important element of anticorruption initiatives during this period. This was the fact that each regime essentially used the machinery of state to probe the actions of the preceding administration.¹²⁸ Whilst this may have been justifiable in certain cases and not so much in others, it was obvious that anticorruption efforts were used as a tool to justify the capture and use of state power. They were also used to harass and intimidate actual or potential opposition. There was a simultaneous disregard and often deliberate cover-up of corruption taking place within the regimes in office. For instance, at the end of the probe into the 'Cement Armada' scandal by the Belgore Commission, the regime of Murtala Mohammed released a white paper stating that the commission had cleared Obasanjo, Murtala Mohammed's second in command, of any wrongdoing. The government never permitted the release of the original report of the Commission. Its white paper revealed just enough information to blame the preceding government of Gowon for the acts of corruption revealed by the scandal. It was however difficult to rationalise how Obasanjo was cleared of any wrongdoing considering he was the Director of Army Engineering Corps and later Federal Commissioner of Works at the time of the Scandal under Gowon's regime.¹²⁹

¹²⁷ Ogbeidi (n 92) 8.

¹²⁸ Austine, Charles and Raymond (n 79) 22.

¹²⁹ *ibid* 23.

Similarly, as noted above, even though General Abacha's government put in place a commendable amount of anticorruption initiatives and laws, he also used the apparatus of state to shield and facilitate the massive acts of corruption carried out by him, his family and associates. This was also the case under the regime of Babangida and other leaders.

There was therefore an evident notion of instrumentality in the manner successive administrations used anticorruption initiatives to achieve their preferred purposes. In the broader picture, it is interesting that this was taking place at a time when the law and development movement emphasised the instrumentality of law to achieve development objectives. As discussed earlier in this chapter, law was used as an instrument for the intervention of the state in the economy to promote growth in the first moment, and as a mechanism to promote market reforms in the second. The use of the instrument of law and the apparatus of the state by successive regimes in this period to achieve their purposes with the claim of tackling corruption can therefore be considered an extension of the instrumentality model to the local level. This was, no doubt, one of the unintended outcomes of the conception and implementation law and development programmes.

Finally, actions taken to deal with corruption were generally top-down with little decentralisation and implemented through the apparatus of state. The initiatives were often conceived at the very top level of government, usually by the head of state and implemented from the federal level. Of the various regimes considered above, it was only during the regime of General Murtala Mohammed that there were recorded cases of probes into corruption that took place at the state level having any meaningful impact. In other cases, actions taken against corruption were highly centralised which

also impacted on the sustainability of the initiatives. Little room was created for alternative mechanisms to supplement or even complement state-led top-down actions against corruption.

3.4 Conclusion

This chapter has considered the approach to corruption in the first and second moments of law and development. It has shown that even though development was defined differently in both moments and the role of law was therefore different in each, the approach to corruption was substantially similar. This similarity in approach is particularly evident when considered with reference to the development policies and programmes pursued by IDIs in countries in SSA in the period in question.

The case of Nigeria provides a good example of this. The country has experienced a high incidence of corruption especially in the public sector since its independence. This has had grave consequences, not just for its economic and social development, but also its political development. Even though the country has been under democratic rule in the past two decades, the preceding four decades since its independence in 1960 were marked by various military coups. These incursions by the military have often been blamed on corruption.

Despite this reality of corruption, IDIs like the World Bank related with the country without regard for or response to the incidence and impact of corruption on development. Loans and grants to promote economic development in the country continued to flow from IDIs to successive regimes. The law and development

movement continued to play its instrumental role in support of predominant development policies and programmes without regard to the obvious corruption in the country.

Despite this, successive governments in Nigeria took various initiatives to tackle corruption. Both democratic and military regimes established legislation, special programmes, policies, probes and other measures in response to the high incidence of corruption. However, most of these initiatives proved unsustainable and ineffective overall. Certain conclusions were reached as to what was responsible for this. The initiatives were often ad hoc, short term and therefore unsustainable. Furthermore, the initiatives and strategies for their implementation were generally formulated and implemented in a top-down manner from the topmost levels of the executive. Also, both military and democratic regimes saw such initiatives as instruments to harass and intimidate political opponents and to achieve broader political goals. In the case of military administrations especially, anticorruption initiatives were used to justify the seizure and use of state power.

For these reasons, anti-corruption efforts in Nigeria during the first and second moments of law and development proved ineffective. The nature of their conception and implementation and the reasons for their ineffectiveness provide a significant backdrop to current anticorruption efforts in Nigeria and the SSA region generally. There are striking parallels between these factors and the challenges faced by current anticorruption efforts. These parallels are considered in section 5.5 of chapter five below.

Chapter Four: EXPLANATIONS FOR THE APPROACH TO CORRUPTION IN THE FIRST AND SECOND MOMENTS OF LAW AND DEVELOPMENT

4.0 Introduction

In his classical work, *Law in Aid of Development*, the late Justice of the Supreme Court of Ghana, Justice T. M. Ocran, described the intellectual discipline of Law and Development as a study of the conscious use of the normative system called law to bring about economic development. He pointed out that in pursuing this goal, law can be seen as serving a dual purpose. Referring to the development process metaphorically as a vehicle in motion, he noted that:

*Law could serve both as ‘accelerator’ to keep the process moving and as ‘brake’ to save the process from derailment. As accelerator, law must be consciously evoked as a tool for social engineering towards development with both legislation and enforcement of law serving as crucial instruments in this regard. **As brake, law must also be consciously evoked as an instrument for stemming pathologies such as ‘corruption’ and other impediments in the development process.***¹

The literature on law and development in the first and second orthodoxies reveals that the relationship between law and development was essentially driven by the need to

¹ Tawia M. Ocran: *Law in Aid of Development*, (Ghana Publishing Corporation 1978) as quoted by Moshood A. Baderin, ‘Law and Development in Africa: Towards a New Approach’ (2011) 1 (1) NIALS Journal of Law and Development 18. (emphasis added).

utilize law for the purpose of accelerating economic development. Terms such as 'instrumentality' and 'functionalist' were used to describe the primary role of law in this regard. As shown in the previous chapter, far too little attention was paid to the role of law serving as a check on factors that could be potentially antithetical to development like corruption. This was the case in circumstances where the facts on the ground and studies in other fields suggested otherwise.² The following discussion explores the reasons for this approach to corruption in law and development in the first and second moments of its evolution.³

4.1.1 Generic Legal Transplantation and Disregard for Local Context

The first explanation is the disregard for local context in exporting legal structures and institutions to countries in SSA. The basic approach adopted by the law and development movement was to replicate legal institutions that were believed to have stimulated growth in the global North in countries in the region. As noted by various scholars⁴, in doing this, there was an obvious indifference to the practical effects of

² See David H. Bayley, 'The Effect of Corruption in a Developing Nation' (1966) 19 *Western Political Quarterly* 719-732; Stanislav Andreski, 'Kleptocracy or Corruption as a System of Government' in Stanislav Andreski, *The African Predicament: A Study in the Pathology of Modernisation* (Atherton 1968); Michael Bratton, 'The Politics of Government-NGO Relations in Africa' (1989) 17 *World Development* 569-587; Susan Rose-Ackerman, *Corruption: A Study in Political Economy* (Academic Press 1978).

³ It is noteworthy that the reasons examined below, whilst aimed at providing answers to the approach to corruption, also mirror some of the broader critiques of law and development over the years.

⁴ David M. Trubek and Marc Galanter, 'Scholars in Self-Estrangement: Some Reflections on the Crisis in Law and Development Studies in the United States' (1974) *Wisconsin Law Review*, 1062-1101; Moshood A. Baderin, 'Law and Development in Africa: Towards a New Approach' (2011) 1 (1) *NIALS Journal of Law and Development* 1; Kelvin E. Davis and M. Trebilcock: 'The Relationship between Law

the institutions being transplanted. Furthermore, there was evident disregard for the pre-existing formal and especially informal structures prevailing within the countries and how these would interact with and affect the transplanted regime. Hence this basic approach of modernisation continued in the first moment of law and development for instance, even though most observers acknowledged its shortcomings with respect to corruption.⁵ J. P. Nettl and Karl von Vorys noted at the time how, through the state-led model of development, a lot of money had been lost in capital intensive projects that benefited only a few corrupt and privileged elites. This was done to the detriment of meaningful development for the general citizenry.⁶ Therefore, whilst the agenda of transplanting modern legal systems was taking place at the formal level, elites on the ground were actively engaged in co-opting those same institutions for their personal purposes and undermining legal reforms which threatened to dilute their authority.⁷

About a decade after the crystallisation of law and development, Trubek also expressed concerns about the strategy of transplanting foreign legal models through an elite-driven approach. His major concern was that it did not consider the cultural, social and political realities of recipient countries.⁸ Friedman further lamented the strategy's indifference to endemic corruption amongst legal officials at the time. He claimed that this led to dysfunctional institutions and laws that amounted to nothing more than words on paper.⁹ In their popular self-critical article, Trubek and Galanter blamed this commitment to legal transplantation for the decline of the law and

and Development: Optimists Versus Skeptics' (2008) 56 American Journal of Comparative Law 895, 899.

⁵ Brian Z. Tamanaha, 'The Primacy of Society and the Failures of Law and Development' (2011) 44 Cornell Int'l L J 209-247.

⁶ J. P. Nettl & Karl von Vorys, 'The Politics of Development' (1968) 46 Commentary 52-54.

⁷ *ibid.*

⁸ David M. Trubek, 'Law and Development' in N.J. Smelser and P. B. Baltes (eds), *International Encyclopedia of Social & Behavioural Sciences* (Pergamon 2001) 8443-8446.

⁹ Lawrence M. Friedman, 'Legal Culture and Social Development', (1969) 4 Law and Soc. Rev. 29

development movement to a deadened condition less than two decades after it began. They described the strategy as an inept attempt to offer American legal models to other countries: models which were flawed and susceptible to executive control and authoritarian abuse.¹⁰ On the general effort of the law and development community, Kevin Davis notes candidly that, 'foreign actors lack the knowledge, capacity and legitimacy to craft legal interventions that promote development' in other countries.¹¹

Although there was little attention to specific attributes of the strategy of transplantation like the indifference to corruption, there existed general explanations for the incidence of unintended phenomena from the implementation of law and development programme during this period. One of these was provided by Robert B. Seidman. His work referred to the lack of a supporting 'legal culture' in the countries where the legal institutions promoted by modernisation were being set up.¹² This led to the realisation of different results from those achieved with the same legal institutions in the global North.¹³ His theory, often referred to as 'the law of the non-transferability of law' states that 'a particular law in two places with different social, political, economic and other circumstances can . . . only by coincidence induce similar behaviour in both places'.¹⁴ Montesquieu had long before expressed a similar view by stating that '[Laws] should be adapted in such a manner to the people for whom they are framed that it should be a great chance if those of one nation suit another.'¹⁵ In same vein, Katherina Pistor argues that transplanting legal norms is impractical since they are often expressed with regard to other concepts and norms in society. Hence, without the understanding

¹⁰ Trubek and Galanter (n 4) 1062-1101.

¹¹ Kevin E. Davis, 'The Prospects for Anti-Corruption Law: Optimists Versus Skeptics' (2012) *Hague Journal on the Rule of Law* 319, 320.

¹² Robert B. Seidman, *The State, Law and Development* (Croom Helm 1978) 34-6.

¹³ *ibid.*

¹⁴ *Ibid* 35-36.

¹⁵ Anne M. Cohler et al. (eds and trs), *Charles De Secondat and Baron De Montesquieu, The Spirit of the Laws: Book 1* (CUP 1989) 6 cited by Davis and Trebilcock (n 10) 904.

and experience of the normative system, the members of the receiving society will find it challenging to adapt to such norms.¹⁶

This perspective therefore reiterates the general sentiment of dependency theorists who reject models of development that are based on their successful application in other societies. They maintain that even if certain types of legal institutions did make positive contributions to the development of some countries, similar institutions will not necessarily make parallel contributions to the development of other countries.¹⁷

In a subsequent work on the Interface between Policy and Implementation, Seidman provided another plausible reason for the attitude towards concerns like corruption in earlier moments of law and development. He noted that the initial inquiry into the relationship between law and development had three basic domains: conflict amelioration, law and society studies and problem solving.¹⁸ A lot of attention was however centred upon the second element which allowed academics to study the legal systems of the Third World. This was however not done with the objective of ameliorating the torment of countries in the global South - the area of concern for the third domain. It rather saw such legal systems as an exotic laboratory in which to test various variables of their chosen academic discipline or the legal systems of countries in the global North. Applying more of a problem-solving methodology within the third domain of inquiry identified by Seidman, would require undertaking research into the difficulties faced by countries in SSA. This would have encouraged more research on

¹⁶ Katherina Pistor, 'The Standardization of Law and its Effect on Developing Countries' (2002) 50 Am. J. Comp. L. 101-134; Dan Berkowitz, Katherina Pistor and Jean Francois Richard, 'Economic Development, Legality, and the Transplant Effect' (2003) 47 Eur Econ. Rev. 165-1995.

¹⁷ Kevin E. Davis and Michael J. Trebilcock, 'The Relationship between Law and Development: Optimist versus Sceptics' (2008) 56 American Journal of Comparative Law 895-946.

¹⁸ Robert B. Seidman, 'Law and Development: The Interface Between Policy and Implementation' (1981) 2 Boston College Third World L.J. 47, 49.

the practical challenges to development like corruption and the best means of approaching those challenges.

The existence of views like this notwithstanding, the movement continued its modernisation project in SSA, with contextual problems like corruption going unheeded. This may have been the case because of the underlying motivation for modelling the legal systems of countries in the region after those of the West. According to Trubek, this was because it promoted the interest of western countries by making the legal systems of countries in SSA congenial to Western capital and firms.¹⁹ The approach of legal transplantation also demonstrated a palpable lack of faith in the ability of countries in SSA to evolve organically in the same way as their counterparts in the global North. This was the case even though considering the peculiar social, political and cultural factors in each country would have informed policies to deal with problems like corruption much earlier.

4.1.2 The Influence of International Financial Institutions

Further explanation for the approach to corruption during this period can be found in the intricate relationship between the field of law and development and International Financial Institutions (IFI), chiefly the World Bank. This influence is reflected in the objectives and scope of both research and programming in the field. The introduction to the recent collection of works by prominent academics in the field, edited by Trubek and Santos reiterated this position. It noted that, at any point in time, the doctrine of

¹⁹ Trubek (n 8) 8446.

law and development can best be understood as the intersection between economic theory, legal ideas and the practice of development institutions.²⁰ Whereas current discourse in the field strives towards a more balanced approach to the place of each of these three components, the methodology of earlier orthodoxies was different. Economic theory and institutional practice of IFIs dominated the agenda and objectives of the field during the first and second moments of law and development. As noted in the previous chapter, law played only an instrumental role in the equation in aid of the prevalent economic theories and institutional practices.

Until the last couple of decades, law and development had mainly focused on the parameter of economic development with the bulk of funding provided by IFIs with a commitment to particular models and conditions.²¹ Thus, 'while law and development projects were uniformly presented as being for the benefit of recipient countries and their people, they were often not by or of recipient countries and their people'.²² Lurking at the background was the fact that legal reforms were essentially imposed as conditions that must be fulfilled before recipient countries could secure loans and other support from IFIs.²³ Reform initiatives were therefore more reflective of the ideological

²⁰ David M. Trubek and Alvaro Santos (eds), 'Introduction: The Third Moment in Law and Development Theory and the Emergence of a New Critical Practice' in *The New Law and Economic Development: A Critical Appraisal* (CUP 2006) 4.

²¹ See Robert C. Effros, 'The World Bank in a Changing World: The Role of Legal Construction' (2001) 35 *International Law* 1341, 1344. Certain scholars argue that it was the Bank's financial prowess in comparison to other development institutions that led to the prioritisation of economic development models and philosophy over other issues. They argue that in the immediate aftermath of decolonisation, the Food and Agriculture Organisation saw agriculture as key to development; the UN Educational, Scientific, and Cultural Organisation said it was education; the World Health Organisation made the case for health, whilst the Bank believed that economic infrastructure was key. The Bank's position became predominant because it was only the Bank that could back up its theory with money. See Heather Anne Marquette, 'The Origins and Development of the World Bank's Anti-Corruption Programme' (PhD Thesis, Durham University 2002) 36-40; Edward S. Mason and Robert E. Asher, *The World Bank Since Bretton Woods* (Brookings Institution Press 1974) 62.

²² Tamanaha (n 5) 243

²³ William Easterly, *The White Man's Burden: Why the West's Efforts to Aid the Rest Have Done So Much Ill and So Little Good* (OUP 2006) 146

imperatives of such institutions than the pressing challenges of recipient countries like corruption.

Easterly opines that the paramount objective of most reforms was ensuring that the legal systems of recipient countries were modernised and streamlined with those of the West to allow for smooth trade and economic relations.²⁴ Hence even though they were stated as being for the development of the former, such streamlining practically benefitted the economies and corporations of the latter. The reforms provided more favourable markets, conducive regulatory environments and sources of raw materials and cheap labour.²⁵

The influence of IFIs on the scholarship of law and development is also reflected in the history of the field itself. Its early scholars admit that ‘many of the early writings on law and development resulted directly from assistance activity, and many scholars formed an interest in law and development through their work in assistance efforts’.²⁶ With development defined in economic terms at the time by the IFIs, programmes were adjudged successful provided the parameters set for the economy were adhered to. Hence, depending on the moment, issues like efficiency of state enterprises, securing property and contractual rights, and well-trained judges dominated the agenda of the movement. There was no apparent necessity to give heed to corruption and other obstacles to especially socio-political development in recipient countries; such questions having the potential of bringing into question the burgeoning law and development enterprise.

²⁴ *ibid.*

²⁵ *ibid.*

²⁶ Trubek and Galanter (n 4) 1063.

It may be the case that IFIs needed to hold on to the simple model of transplanting legal reforms for economic development which was easily supported by the traditional tools of foreign assistance.²⁷ It may have seemed really daunting to accept that each country was unique with its challenges. The same would have applied to recognising that there was no easy answer to the question of what laws and what areas were more important in each country, or that the expertise of these institutions in the area of legal reform was generally of dubious value.²⁸

A similar factor with the evolution of the field which may have impacted on its approach is that, in cases where its objectives were not being dictated by IFIs, they were dictated by western countries committed to similar goals. Lan Cao observes that 'the American law and development movement arose out of the Cold War objectives of the United States to "modernise" developing countries and bring them within the orbit of the West rather than the Soviet bloc.'²⁹ When used in the context of the US therefore, the term 'law and development' is associated with efforts of American governmental organisations such as the USAID, the Peace Corps, Rockefeller Foundation and the Ford Foundation aimed at promoting 'Western-friendly economic institutions and Western-oriented legal infrastructures'.³⁰ In a broader way therefore, foreign actors were found to be involved in the promotion of certain legal reforms which advanced their own interests in matters like global security or exporting particular values, as opposed to the primary objective of helping poor countries to develop.³¹

²⁷ Trubek (n 8) 8445.

²⁸ *ibid.*

²⁹ Lan Cao, 'Law and Economic Development: A New Beginning? Review of Anthony Carty (ed) *Law and Development*' (1997) 32 *Texas International Law Journal* 545.

³⁰ *Ibid.*

³¹ Rachel Kleinfeld, 'Competing Definitions of the Rule of Law' in Thomas Carothers (ed) *Promoting the Rule of Law Abroad: In Search of Knowledge* (Carnegie Endowment for International Peace 2006) 56

The central perspective to the IFIs argument is therefore the fact that corruption was considered a challenge within the categorisation of internal politics and therefore outside the mandate of these institutions. The Articles of the World Bank, for instance, prohibits the Bank from interfering in political activities or being influenced by political considerations in its activities. Its decisions are required to be influenced only by economic issues.³² Since corruption was conceptualised as political rather than an economic issue at the time, it was therefore avoided by these institutions on grounds of legality. On the other side of the equation, Gonzalez De Asis points out that leaders of the recipient countries also resisted any form of involvement in anticorruption work by donors on the grounds of interference in the domestic affairs of their countries.³³

4.1.3 The Challenge of Data

A third explanation for the discouraging approach towards corruption concerns the lack of reliable empirical data explaining the effect of law and development programmes in the global South: what proved successful and what did not, how much change was being experienced on the ground, what factors were aiding success and what factors were inhibiting progress in the various countries. Trubek points to the fact that the first and second moments of law and development were based on a simplistic model of history which presumed causal and linear relationships between the establishment of a 'modern' legal system and market democracy. Little evidence

³² International Bank for Reconstruction and Development, Articles of Agreement. Art. III, s 4(vii) and Art. IV, s 10

³³ Maria Gonzalez de Asis, *Anticorruption Reform in Rule of Law Programs* (World Bank Institute 2006) 5.

was produced to support this theory which represented nothing more than an ethnocentric and imperialistic projection of the ideals of the legal culture of the West.³⁴ The outcome of this is that billions of dollars have been spent on legal reforms that were guided more by intuition, assumptions and hope, than by data or systematic knowledge of circumstances on the ground.

Commenting on the general state of knowledge accumulated in the field of law and development, Thomas Carothers, director of the rule of law project for the Carnegie Foundation tells of how a long-time participant in law and development projects confided in him that 'we know how to do a lot of things, but deep down, we don't know what we are doing'.³⁵ Early researchers such as Burg lamented the general lack of definitive knowledge on the relationship between law and development.³⁶ Nyhart notes that where knowledge existed, it was at best superficial.³⁷ In any case, the result of this was the formulation of development programmes and policies with challenges of meaningful implementation and a propensity to produce unintended outcomes.

It has been observed that most countries in the global South showed an apparent commitment to the ideals of liberty, national power and economic growth. However, the reality was that 'third world governments often in fact constitute or represent narrow and self-centred elites whose vital concern is to protect and augment their dominant positions'.³⁸ And they were able to do so with the aid of legal mechanisms promoted by law and development. Regarding judicial reform for instance, Tamanaha observes that certain reforms in Latin American countries that were aimed at achieving

³⁴ Trubek (n 8) 8444.

³⁵ Thomas Carothers (ed), 'The Problem of Knowledge' in *Promoting the Rule of Law Abroad: In Search of Knowledge* (Carnegie Endowment for International Peace 2006) 15.

³⁶ Elliot M. Burg, 'Law and Development: A Review of the Literature and Critique of "Scholars in Self-Estrangement"' (1977) 25 *American Journal of Comparative Law* 492-530.

³⁷ J. D. Nyhart, 'The Role of Law in Economic Development' (1962) 1 *Sudan L.J and Reports* 394-410.

³⁸ Trubek and Galanter (n 4) 1093.

judicial autonomy led to rampant nepotism and further opportunities for corruption to thrive.³⁹ The dearth of empirical knowledge in the field made it difficult to discern these situations and for reformers to react accordingly. The lack of empirical knowledge was further exacerbated by the practice of development organisations who often relied on 'foreign' consultants in the implementation of development programmes. This was done at the expense of using local experts with context-specific knowledge and experience.

The waning of faith in the law and development movement in the 1970s has often been attributed to the realisation of this glaring discrepancy between models for legal development in the global South and the realities on the ground. These realities were revealed by the findings of empirical research carried out by social scientists and reflections of legal scholars. They exposed major flaws in the approach of law and development.⁴⁰

There are admittedly obvious challenges to measuring the impact of legal reform policies and programmes. This notwithstanding, the lack of such definitive data played a role in the lack of attention to contextual issues like corruption in the earlier stages of the movement.

³⁹ Tamanaha (n 5) 223.

⁴⁰ Trubek and Galanter (n 4) 1090.

4.1.4 The Predominance of the Economic Paradigm of Development

The fourth explanation is a point that has been referred to earlier; that the agenda of the field of law and development was and continues to be dictated by economic conceptions of development. During both moments under consideration, law was mainly a responsive mechanism used in the promotion of economic objectives. In accordance with the dominant economic tone of this period, policy formulation in law and development was 'arguably . . . a function of prevalent economic development models and their conception of the proper relationship between the market and state, which in turn has been reflected in international development assistance.'⁴¹ Trubek and Santos opine that this relationship between economics, legal theory and the practice of development institutions is fluid and dynamic rather than a one-way causal relationship.⁴² However, as noted earlier, this does not describe appropriately the situation in the earlier moments of law and development. Trubek himself had admitted in an earlier work that lawyers were latecomers to development research, responding slower than economists and other social scientists to the need for insight into development theory.⁴³ Some scholars admit that in many situations, due to the predominance of economics, it was often difficult to disentangle the 'law' part of the

⁴¹ F. Charles Sherman, 'Law and Development Today: The New Developmentalism' (2011) 10 *German Law Journal* 1258-1273.

⁴² Trubek and Santos (n 20) 4.

⁴³ Trubek and Galanter (n 4) 1065.

development programmes.⁴⁴ Law was considered epiphenomenal, the outcomes of legal norms ultimately shaped by more fundamental economic forces.⁴⁵

This is particularly significant with respect to the approach to corruption. The reason for this is that, during this period, there were conflicting perspectives on the effect of corruption on economic development. As discussed in section 2.5 above, there were studies that confirmed the negative effects of corruption on development. There were however others that pointed to the possibility of corruption enhancing economic development by providing a mechanism to overcome cumbersome regulations and institutional shortcomings, and further providing extra motivation for public servants to perform their duties more effectively. With findings such as the latter appearing in economic studies, and law and development playing a complementary role to economic policies and programmes at the time, it is understandable how such perspectives would have influenced the indifferent approach to corruption in law and development.

4.1.5 Blind Spots of Law and Development

A final point which has been made from a variety of viewpoints is the possibility that the very agenda and approaches that defined law and development thought during this period may have aided the escalation of corruption in countries in SSA. The argument here is that being the proponents of the frameworks and institutions may have unsighted scholars and practitioners of law and development. This may have

⁴⁴ D. Daniel Sokol. 'Law and Development – The Way Forward or Just Stuck in the Same Place?' (2010) 104 Northwestern University Law Review Colloquy 238-243

⁴⁵ Davis (n 11) 320.

prevented them from investigating the subject-matter of corruption especially in terms of its manifestations within the institutions and mechanisms being established. For instance, the bureaucratic institutions promoted by the legal reforms of the first moment emphasised control of economic activities by the state through import substitution industrialization. It was obvious that this framework provided favourable conditions for corrupt public officials to thrive, yet it was not dealt with by reformers. Another example is the doctrine of 'legal liberalism'⁴⁶ which was promoted by the movement in the 1970s and 1980s. The basic assumption underlying it is that law should operate in a neutral and objective way in society. Tamanaha observes however that this concealed the fact that law was being used to maintain an unjust social order in the service of the elite in society who exploited the transplanted legal institutions to perpetuate their corrupt activities.⁴⁷ He further remarked that:

*Critical legal theorists were especially scathing about legal formalism, which they attacked as a false claim of objective rule application, when the truth is that indeterminate legal rules allow judges substantial room to manoeuvre. . . they are deceptive when they hide behind formalistic rule-bound reasoning to come to preferred ends while pretending that the decision was compelled by law.*⁴⁸

Trubek and Galanter raised similar questions. They noted that emphasis on liberal legalism may have blinded researchers to important questions on the possibility of the

⁴⁶ For general discussion of the doctrine of legal liberalism within the historical context of the development of its jurisprudence in the United States of America, see Robin West, 'Law, Rights and other Totemic Illusions: Legal Liberalism and Freud's Theory of the Rule of Law' (1986) 134 University of Pennsylvania Law Review 817-882.

⁴⁷ Tamanaha (n 5) 240.

⁴⁸ *ibid*

model generating a very different set of results that might flow from expanding the role and orientation of the legal profession in a country. For instance, might not an enlarged and modernised legal profession increase social inequality by raising the cost of legal services beyond the reach of the 'have-nots' in society? And might not a more instrumental approach to law, say, in an authoritarian regime weaken instead of strengthening individual rights?⁴⁹ Most of these questions found little place in law and development which was rather preoccupied with the positive presuppositions of liberal legalism. It was assumed that legal development would enhance individual liberty and contemporaneously guarantee that governments acted in the best interest of the citizens. Great faith was placed in the ability of law to curb arbitrary government action and ensure greater governmental responsiveness.⁵⁰ The other possibilities that this might lead to were rarely considered. The fact that law may serve as an instrumental tool in the hands of the state for selfish purposes rather than the general good was not explored. Legal liberals carried on believing that all positive aspects of the assumptions of the doctrine would eventually work out.

Furthermore, some scholars have come to the realisation that legal instrumentalism, in some cases, produced the very antithesis of what was intended. Instead of being considered as institutional rules for reconciling conflicting interests, it was adopted by governments as a mechanism for the legitimisation and consolidation of state power in most cases.⁵¹ Understandably, this effect intensified as the power of the state increased through the instrumentality of law, and non-state traditional structures experienced corresponding erosions of power.⁵²

⁴⁹ Trubek and Galanter (n 4) 1076.

⁵⁰ *ibid.*

⁵¹ Cao (n 29) 550.

⁵² *ibid.*

The point of emphasis here is that the instrumental application of law for certain goals during this period 'may have not only been irrelevant to development, but in certain circumstances downright harmful by enabling corruption, establishing inequality and generally impeding development'.⁵³ Referring to this effect as the 'negative face' of the law in their reflective essay in 1974, Trubek and Galanter noted that 'intimations of [the] badness' of law in relation to the method of its use in the law and development movement become apparent when you consider that law may be used to justify and legitimise arbitrary actions by government rather than to curb or ban such excesses.⁵⁴ Also, 'increased instrumental rationality in legal processes together with governmental regulation of economic life may contribute to the economic wellbeing of only a small elite, leaving the mass no better, or even worse off.'⁵⁵ The tone of their essay indicates that this was the case, not just in countries in SSA, but in the United States itself from which most of the law and institutions originated.

The above discussion shows that there were cases where the adverse effects of the approach of law and development were recognised. They were however ignored or downplayed and regarded as uncommon deviations from the normality of the instrumentality of law in advancing development.⁵⁶ The reality of corruption in countries in SSA during this period - as discussed in section 3.3.1 of the previous chapter - shows that these deviations were more common than the movement recognised or admitted.

⁵³ Burg (n 36) 514.

⁵⁴ Trubek and Galanter (n 4) 1083-1084.

⁵⁵ *ibid.*

⁵⁶ *ibid.*

4.2 Conclusion

This chapter has examined various reasons for the lack of attention to corruption in law and development in the first two moments of its evolution. The 1990s heralded a drastic change which saw concern for corruption take a central place in development. This change was considered a part of a wider ideological adjustment in the definition of development and its objects. The nature of this change and its influence on anticorruption efforts at the local level are considered in the next chapter.

It is however important to understand the place of the factors discussed in this chapter in the broader context of the change in approach to corruption in the third moment of law and development. Did the change in approach take place as result of the movement learning from the pitfalls discussed above or did it take place in spite of them? Has law and development moved on from most of these factors that relate to core assumptions that underlie the reform efforts? If so, what impact has this had on the current approach to corruption? These are some of the questions at the background to much of the discourse in the rest of this work.

Chapter Five: THE APPROACH TO CORRUPTION IN THE THIRD MOMENT OF LAW AND DEVELOPMENT

5.0 Introduction

Following the epoch-making speech of the President of the World Bank in 1996 which highlighted the effect of the “cancer of corruption” on development and the need to deal with it,¹ the last twenty years have witnessed unprecedented developments in anticorruption. This transverses research, international policies and cooperation and national anticorruption efforts. The hitherto lacklustre non-interventionist approach of IDIs towards the subject has since witnessed a dramatic reversal. These institutions have over time rolled out an appreciable number of rule of law and good governance programmes with the objective of tackling corruption. A robust system of multilateral and regional treaties has also emerged since 1996 dealing with the criminal and civil aspects of dealing with corruption.

The combined effect of the commitments undertaken by countries through the signing of these treaties and the pressure from IDIs to implement good governance programmes has seen the emergence of anticorruption regimes in most countries. In

¹ World Bank, *Voice for the World's Poor: Selected Speeches and Writings of the World Bank President James D. Wolfensohn, 1995-2005* (World Bank, Washington DC 2005) 45.

SSA, most countries now have robust anticorruption regimes comprised of legislation, institutions and broader governance initiatives.²

This chapter looks at this new approach to corruption and its impact on efforts to tackle corruption at the country level. To do so, it looks first at the changes in the conception of development and the role of law in the development process that have taken place in the third moment of law and development. These changes provide a background to the approach to corruption during this moment which is discussed next. The rest of the chapter illustrates the influence of this change in approach on the legal and institutional framework for anticorruption at the country level in Nigeria. More significantly, the discourse looks at the practical impact of these changes in terms of improving anticorruption efforts in the country. This is done by examining the performance of the new regime against the background of the problems of pre-existing efforts to tackle corruption in the country, to ascertain if and what progress has been made.

5.1 Interdependence of Development: The Comprehensive Development Framework

The more comprehensive conception of development during the third moment of law and development provides an important context for the approach to corruption during

² See Marie Chêne, 'Update on UNCAC Implementation in Africa' (2006) U4 Anti-Corruption Resource Centre Expert Answer <<http://www.u4.no/publications/uncac-and-africa/>> accessed 29 April 2017.

As of 12 December 2016, over 90 per cent of countries in the region were state parties to UNCAC. See <<https://www.unodc.org/unodc/en/treaties/CAC/signatories.html>> accessed 29 April 2017.

this period. As discussed in section 3.2.1 of chapter three above, the 1990s saw the gradual mainstreaming of social concerns in development practice. This was not a move away from the pre-existing predominantly economic development paradigm but rather an addition to it. And by the turn of the century, an interdependent and comprehensive perspective of development that emphasized progress in all sectors of society – economic, social, political, cultural and legal – had taken hold.³

Amartya Sen provided the most vivid illustration of the importance of this comprehensive approach to development in his paper delivered at the World Bank Legal Conference in 2000. In expressing the need for the different groups of American revolutionaries to stick together, Benjamin Franklin had, in 1776 proclaimed: "Yes, we must all hang together, or most assuredly we shall all hang separately." In his paper, Sen quoted Benjamin Franklin's statement in arguing that if the different aspects of development are not simultaneously considered and addressed for analysis and action, they may end up 'hanging [to death] separately'.⁴ Furthermore, writing on the interdependence of various factors and actors on development, he observed elsewhere that:

It is hard to think that any process of substantial development can do without very extensive use of the market, but that does not

³ James D. Wolfensohn, 'Building an Equitable World: 2000 Annual Meetings Address' (The World Bank Group, 26 September 2000) <<http://web.worldbank.org/WBSITE/EXTERNAL/EXTABOUTUS/EXTWEBARCHIVES/0,,MDK:22201409~menuPK:64654237~pagePK:64660187~piPK:64660385~theSitePK:2564958,00.html>> accessed 29 December 2016.

⁴ Armatya Sen, 'What is the Role of Legal and Judicial Reform in the Development Process' (World Bank Legal Conference on the Role of Legal and Judicial Reform in Development, Washington DC, June 2000) 1 <<http://issat.dcaf.ch/Learn/Resource-Library/Policy-and-Research-Papers/What-is-the-role-of-legal-and-judicial-reform-in-the-development-process>> accessed 14 February 2017

*preclude the role of social support, public regulation, or statecraft
when they can enrich – rather than impoverish – human lives.*⁵

A natural implication of this is the revision of neoliberal ideas with the overarching idea of development in this context being a functional amalgamation of hitherto distinct development concerns.⁶ In fact, Sen reckons that this goes beyond just causal interdependence and 'involves a constitutive connection in the concept of development as a whole.'⁷

On his part, Baderin compares the interdependence of development to the African proverbial three-legged stool. He avers that for sustainable development to be achieved in Africa, all three 'legs' of development, namely economic, socio-political and human development, must be firmly in place.⁸

In 1999, the World Bank issued its Comprehensive Development Framework (CDF), which, amongst other things, emphasised the interrelation of all elements of development. This includes social, structural, human, governance, environmental, economic, and financial.⁹ The proposal of the framework reiterates that '[T]he macroeconomic aspects on the one side, and the social, structural and human on the other, must be considered together.'¹⁰ It notes that the CDF has been widely and

⁵ Amartya Sen, *Development as Freedom*, (OUP 1999) 7.

⁶ David M. Trubek and Alvaro Santos (eds), 'Introduction: The Third Moment in Law and Development Theory and the Emergence of a New Critical Practice' in *The New Law and Economic Development: A Critical Appraisal* (CUP 2006) 3.

⁷ Sen (n 5) 8.

⁸ Moshood. A. Baderin, 'Law and Development in Africa: Towards a New Approach' (2011) 1 (1) NIALS Journal of Law and Development 28.

⁹ World Bank, 'Comprehensive Development Framework'.

<<http://web.worldbank.org/WBSITE/EXTERNAL/EXTABOUTUS/EXTWEBARCHIVES/0,,MDK:22201409~menuPK:64654237~pagePK:64660187~piPK:64660385~theSitePK:2564958,00.html>> accessed 31 May 2014.

¹⁰ James Wolfensohn, 'A Proposal for a Comprehensive Development Framework' (World Bank, January 21, 1999) <http://web.worldbank.org/archive/website01013/WEB/0_CO-87.HTM> accessed 19 July 2014.

explicitly accepted by the international community in recognition of its importance to achieving poverty reduction and sustainable development.¹¹ Due to the central role of the Bank in dictating development policy globally, the title of this document became synonymous with this new paradigm of development that defines the third moment of law and development.

Earlier works by scholars like Seers suggests that certain aspects of development need to be achieved before others within a comprehensive approach to development. He posits that poverty, unemployment and inequality need to dwindle in society before issues related to political and economic goals, legal development and environmental concerns are addressed.¹² He reasons that development in the mould of the latter would make little meaning if hunger, unemployment and inequality were yet persisting in society. The rationale for this argument is understandable in the context of people being able to achieve a basic level of sustenance as a foundational aim of development. In fact, it is this line of argument that informs the setting of a poverty line as a marginal measure of development.¹³

However, as discussed in section 3.2.1 of chapter three above, there is an intricate reciprocal relationship between development in political, legal and other 'higher' goals of development and more basic goals such as poverty reduction. Moreover, simultaneously pursuing development in all sectors is important for countries in SSA that require accelerated development to 'catch up' with the rest of the World. Adhering

¹¹ *ibid.*

¹² Dudley Seers, 'The Meaning of Development' (1969) Institute of Development Studies Communication 44, 6.

¹³ Currently, the poverty line is pegged at \$1.90 per day by the World Bank based on 2011 Purchasing Power Parity (PPP). For statistics on current level of people living below the poverty line, see World Bank, 'FAQs: Global Poverty Line Update' <<http://www.worldbank.org/en/topic/poverty/brief/global-poverty-line-faq>> accessed 29 April 2017.

to theories of development that propose a sequential pursuit of development goals may have the effect of reducing the urgency of achieving comprehensive development in such countries.

5.2 Law and the ‘New Developmentalism’

Apart from the comprehensive conception of development, the major driving force for development and the role of law in the development process were other factors that defined the third moment in law and development. The 1990s witnessed a loosening of the strict market-oriented rule of law approach. This led to a discernible departure from pre-existing orthodoxies in law and development towards a broader strategy for development.

Writing on the evolution of this approach, Hauserman recounts that during the 1980s and 1990s, the global South was hit by a series of economic crises that questioned the foundations of existing assumptions about international development as espoused by the Washington Consensus. Hence, by the turn of the century, a fundamental modification of the global approach to development could be identified.¹⁴ Although some have argued that this shift represents no more than a ‘christened

¹⁴ Bridget Hauserman, ‘Review Essay – Exploring the New Frontiers of Law and Development. Reflections on Trubek/Santos eds., *The New Law and Economic Development* (2006)’ (2007) 8 (6) German Law Journal 533-547.

neoliberalism',¹⁵ this new perspective has come to be known as the 'new developmentalism'¹⁶ or the moment 'law and the new developmental state'.¹⁷

Unlike previous orthodoxies that emphasised the importance of the state or the market over the other in fostering economic development, the new developmentalism prompts a rethink of the role of the state in the light of obvious shortcomings of the prevailing emphasis on markets. In doing so, it seeks to encourage extensive collaboration, communication and overlap between the public and private sectors in policy formulation and implementation. In this respect, Trubek was quick to stress that the reinvention of the role of the state under the new developmentalism is not a mere reversion to older and largely discredited systems of state intervention. Rather the new developmental state is inspired by a new political economy in which state action is used to empower the private sector in areas in which the latter may be lacking such as risk reduction and subsidising knowledge creation.¹⁸

This stream of law and development thought also encompasses a broader conception of the role that law should play in development. The rule of law is now pursued as a substantive component of the development agenda in its own right.¹⁹ Tamanaha refers to this new role as the 'progressive law and development package'.²⁰ He

¹⁵ David Kennedy, 'The "Rule of Law", Political Choices and Development Common Sense' in D. M. Trubek and A. Santos, *The New Law and Economic Development: A Critical Appraisal* (CUP 2006) 95, 150.

¹⁶ The use of this term is often attributed to Luiz Carlos Bresser-Perereira, from his work Luiz Carlos Bresser-Pereira, 'The New Developmentalism and Conventional Orthodoxy' (2006) 20(3) *Sao Paulo Em Perspectiva* 5-24. It has also been prominently referred to as the moment of law and the developmental state by Wisconsin Law Professor and long-time expert and founder of research on law and development, David Trubek.

¹⁷ David M. Trubek, 'The Political Economy of the Rule of Law: The Challenge of the New Developmental State' (2009) 1 *Hague Journal on the Rule of Law* 28-32.

¹⁸ *ibid* 31.

¹⁹ Peer Zumbansen, 'Law After the Welfare State: Formalism, Functionalism and the Ironic Turn of Reflective Law' (2008) 56(3) *American Journal of Comparative Law* 769-808; Thomas Carothers (ed), 'The Rule of Law Revival' in *Promoting the Rule of Law Abroad: In Search of Knowledge* (Carnegie Endowment for International Peace 2006) 3-13.

²⁰ Brian Z. Tamanaha, 'The Primacy of Society and the Failures of Law and Development' (2011) 44 *Cornell Int'l Law Journal* 209, 232.

observes that this moment pushes for expansion beyond just aiding economic development to include integrated reforms as well.²¹ Hence the role of law was extended to address a wide variety of issues including poverty reduction, democracy, human rights, due process, adequate social safety nets, equity and good governance.

Support for this new strand of legal reform programmes from the World Bank and other development practitioners flourished on the belief that the various aspects of the reform package would be mutually reinforcing in all directions, the rule of law serving as the mega-structure with responsibility for the whole.²² Whilst not trivialising its role in support of the market, this moment requires that law facilitate development by being sensitive to 'the social' as well.²³ This expansive approach is seen by some as an attempt to remedy the failures of the preceding moments of law and development, and an attestation that law is not just adaptable to fostering development, but also responsive, reflective and based on a learning mode of legal regulation.²⁴

The current orthodoxy therefore charts a course that flows from a confluence between two dominant projects which may collectively be referred to as the promotion of market democracy. The first is the project of democracy with an emphasis on the specification, recognition and protection of human rights at the international level and nationally. The second is the project of economic reform, based on Douglas North's New Institutional Economics theory and which reaffirms the role of law as an institution for creating and securing an enabling environment for the development of the market.²⁵ Hence the rule of law, in its current dimension, has become an attractive

²¹ *ibid.*

²² Guillermo A. O'Donnell, 'Why the Rule of Law Matters' (2004) 15 *Journal of Democracy* 32-46.

²³ Kennedy (n 15) 158.

²⁴ Jane E. N. Murungi, 'Review of D. M. Trubek and A. Santos (eds), *The New Law and Economic Development: A Critical Appraisal*' (2008) 46 *Osgoode Hall Law Journal* 685-692.

²⁵ David M. Trubek, 'Law and Development' in N.J. Smelser and P. B. Baltes (eds), *International Encyclopedia of Social & Behavioural Sciences* (Pergamon 2001) 8443-8446.

unifying factor for both pro-democracy and pro-market interests, which originally appeared to be at odds.²⁶ Based on this, the widened scope of legal reform strategies for the new developmentalism range from dominant themes during the first moment of law and development like legislative drafting, legal education and professionalisation of the bar, to effective administration of justice, protection of property and contract rights, independence of the judiciary and other dominant subjects of the second moment.

In terms of approach, it is safe to say that legal reform efforts under the new developmentalism continue to be based on the transplanting of western ideas of an ideal legal system for development in pursuing the above objectives. This is the case despite well-established critiques of this strategy and the apparent shortcomings of attempting to replicate legal institutions in different countries without due consideration of the social, political, economic and cultural dynamics of each country.²⁷ In what has been termed a 'modernisation theory redux', the assumption that the political, economic and legal arrangements promoted by western ideas of the rule of law are the best available and represent the future trajectory of societies around the world that hope to thrive still reigns supreme.²⁸

In this era, as was the case in the first and second:

The faith in legal change through top-down reforms supported by Western legal expertise remains strong. The idea that there is one best way to build the legal institutions for markets and democracy is still pervasive, as is the faith that this path has already been trod

²⁶ Murungi (n 24) 688.

²⁷ Kerry Rittich, 'The Future of Law and Development: Second-Generation Reforms and the Incorporation of the Social' in David M. Trubek and Alvaro Santos (eds), *The New Law and Economic Development: A Critical Appraisal* (CUP 2006) 204.

²⁸ Tamanaha (n 20) 215.

*by the rich countries of the West which stand as models and a source of expertise. People still believe that Western laws can be transplanted to countries as diverse as Brazil and Bangladesh.*²⁹

Hence, despite the repeated excoriation of modernisation, it continues to define the approach in all three moments of law and development, albeit in a more nuanced way in the current moment. According to Tamanaha:

*What helps disguise this resurrection is that the elements are not bundled together as tightly as before – capitalism is now promoted separately as essential to wealth creation; democracy is championed as the touchstone of a free and peaceful society; the rule of law is said to be essential to wealth creation and limiting government tyranny; and human rights are claimed to be universal.*³⁰

This has led some scholars to regretfully observe that the lessons of the first and second moments of law and development appear not to have been learnt by current practitioners of the rule of law reform enterprise.³¹

It is however worth noting that, at least in theory, the new developmentalism seems to be responding to the lingering criticism of non-consideration of local contexts in the formulation and implementation of development programmes. Attention is being drawn to the need to focus on fostering experimentation and revision,

²⁹ Trubek (n 25) 8445.

³⁰ Tamanaha (n 20) 215.

³¹ Wade Channell, 'Lessons Not Learned About Legal Reform, in *Promoting the Rule of Law Abroad: In Search of Knowledge* (Thomas Carothers ed. Carnegie Endowment for International Peace 2006) 137, 139.

coupled with a disposition to finding out what works through policy innovation.³² Development policy is now approached as involving large scale knowledge coordination between governments and market participants, as well as, 'search, experimentation and tailoring of public action to specific needs and contexts'.³³ The process of learning that derives from this is regarded as a central component of the new developmentalism. There is now more emphasis on the consideration of local institutions and local participation in the design and implementation of reforms.³⁴ The ultimate objective of this is to encourage local groups to take ownership of reforms and projects.³⁵

Whether this is the case in practice is considered with respect to the approach to corruption during this moment.

5.3 Approach to Corruption

The approach to corruption under the new developmentalism is intrinsic to two factors that define the moment itself. The first is the broader attitude to development already discussed. Baderin notes that it would be difficult to realise such comprehensive

³² David M. Trubek, 'Developmental States and the Legal Order: Towards a New Political Economy of Development and Law (2009) University of Wisconsin Law School Legal Studies Research Paper Series Paper No. 1075 <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1349163> accessed 12 August 2017.

³³ *ibid* 8.

³⁴ Nilima Gulrajani, 'The Art of Fine Balances: The Challenge of Institutionalising the Comprehensive Development Framework Inside the World Bank' in Diane Stone and Christopher Wright (eds), *The World Bank and Governance: A Decade of Reform and Reaction* (Routledge 2006) 48-66.

³⁵ John Ericsson, *The Comprehensive Development Framework: A Multi-Partner Review* (World Bank Operations Evaluation Department Document 2003) 2.

development in Africa without the promotion of, amongst others, the social facets of development which encompass:

*Respect for all human rights and fundamental freedoms, democratic and effective institutions, **combating corruption**, transparent, representative and accountable governance, popular participation, an independent judiciary, the rule of law and civil peace, all of which the UN Agenda for Development classify as indispensable foundations of development.*³⁶

Within this approach to development therefore, greater attention has been paid to corruption and its effect on development under the new developmentalism. Development now requires balancing the various attributes of the new developmental state in a manner that allows for administrative flexibility, discretion and engagement with the private sector, whilst maintaining predictability and preventing corruption.³⁷ Accordingly, anticorruption policies, programmes and initiatives on the international stage and locally have flourished as the era has progressed.

The second factor is the especial role played by the World Bank. As pointed out above, the President of the World Bank, James Wolfensohn during his leadership, accentuated the effect of corruption on development in a manner that had never before been addressed by the Bank or indeed other IDIs.³⁸ He noted the 'need to deal with

³⁶ Baderin (n 8) 24 (emphasis added).

³⁷ F. Charles Sherman, 'Law and Development Today: The New Developmentalism' (2011) 10 German L.J. 1258, 1260.

³⁸ Vinery Bhargava (ed), 'Curing the Cancer of Corruption' in *Global Issues of Global Citizens: An Introduction to key Development Challenges* (World Bank 2006) 341-370.

James D. Wolfensohn was president of the World Bank from 1995-2005, comprised of two five-year terms. He spoke about the need to tackle corruption at the first Annual General Meeting of the Bank and the IMF under his presidency in 1996 and introduced the Bank's first anticorruption strategy a year later. For more on his role in this regard, See World Bank, 'History: James David Wolfensohn' <<http://www.worldbank.org/en/about/archives/history/past-presidents/james-david-wolfensohn>> accessed 13 February 2017.

the cancer of corruption' in order for countries to achieve growth and poverty reduction.³⁹ And for this purpose, he pledged the Bank's willingness to 'support international efforts to fight corruption' and assist member countries looking to implement national programmes to discourage corrupt practices.⁴⁰ This event was a culmination of a number of factors that had taken place in the field of development, global politics and also within the Bank itself between the 1980s and early 1990s which provided the preconditions for the Bank's anticorruption agenda.⁴¹ This singular event was however a major turning point in attitudes towards corruption globally and heralded the era of anticorruptionism in development discourse and practice. This era has since witnessed the emergence of an extensive and complex global regime for dealing with corruption which has redefined national efforts to tackle corruption in countries like Nigeria.

Firstly, several international instruments on corruption have since been adopted by multilateral and regional bodies like the UN, OECD, EU, OAS and the AU. These include the Inter-American Convention against Corruption 1996; the 1997 Convention on the Fight against Corruption Involving Officials of the European Community or Officials of Member States of the European Union; the Council of Europe Criminal Law Convention on Corruption 1999; the Council of Europe Civil Law Convention on Corruption 1999; OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions 1997; and arguably the most significant and comprehensive, the 2003 UN Convention Against Corruption. At the regional level,

³⁹ James D. Wolfensohn, 'People and Development' (Address to the Board of Governors at the Annual General Meetings of the World Bank and the International Monetary Fund, 1 October 1996), reprinted in World Bank, *Voice for the World's Poor: Selected Speeches and Writings of World Bank President James D. Wolfensohn, 1995-2005* (Washington, D.C 2005) 50.

⁴⁰ *ibid* 51.

⁴¹ Susan Rose-Ackerman, 'The Role of the World Bank in Controlling Corruption' (1997-1998) 29 *Law and Policy in International Business* 93-114. These factors are discussed in detail in section 6.1 of the next chapter.

the following instruments apply to SSA: the African Union Convention on Preventing and combating Corruption 2003; the 2001 Southern African Development Community Protocol Against Corruption; and the Economic Community of West African States Protocol on the Fight Against Corruption also adopted in 2001.

Although there are apparent variations in terms of geographical coverage and the content of obligations, the substance of these conventions is essentially similar. The provisions usually cover the broad categories of prevention, criminalisation, implementation mechanisms, asset recovery and international cooperation. Whilst the details and effect of these international instruments are discussed below with regard to their application to Nigeria, it suffices to state here that the provisions of the applicable instruments have dictated the legal and institutional framework for dealing with corruption in the country to a considerable degree. For instance, the country has established several anticorruption institutions in accordance with its obligations under these international instruments.⁴²

During this era, various donor agencies also commenced taking a wide range of strategic steps focused on anticorruption in terms of research, programmes and policies. For instance, the aid agencies of the United Kingdom, Netherlands, Norway and Germany established the Utstein Group Anti-Corruption Resource Centre in 1999 'to share information, build knowledge and disseminate lessons learned in their anti-corruption efforts'.⁴³ The United Nations Development Programme (UNDP) got involved in anticorruption work through its Programme for Accountability and

⁴² This is in accordance with, for instance, Articles 6 of UNCAC which provides that each party shall ensure the existence of a body or bodies responsible for the prevention of corruption, whilst Article 36 prescribes the establishment of a body or bodies in each state specialised in combating corruption through law enforcement. It will be shown later in the chapter how the country has acted in accordance with these provisions.

⁴³ Maria Gonzalez de Asis, *Anticorruption Reform in Rule of Law Programs* (World Bank Institute 2006) 1-4.

Transparency (PACT) in 1995/6, and the United States Agency for International Development (USAID) did the same through the work of its Centre for Democracy and Governance (CDG).⁴⁴ The United Kingdom's Department for International Development (DfID) has since 1999 undertaken a number of projects in support of anticorruption efforts in various countries and of general global initiatives targeting corruption,⁴⁵ as has the European Union, albeit to a limited degree.⁴⁶

Furthermore, following the ground-breaking work of Transparency International in drawing global attention to corruption also in the 1990s,⁴⁷ other CSOs also began to emerge with an interest in the manifestations of corruption in different sectors and with respect to different issues. Some of these are Global Financial Integrity (GFI)⁴⁸ which works on research and policy solutions for illicit financial flows globally and Publish What You Pay (PWYP)⁴⁹ which promotes financial transparency in the extractive industry with chapters in countries around the world, amongst many others.⁵⁰

The reforms pursued also included rule of law programmes that concentrated on providing judiciaries with adequate tools to effectively address corruption. For instance, due to an increased flow of information between the various parties involved

⁴⁴ Heather Marquette, 'The Origins and Development of the World Bank's Anti-Corruption Programme' (PhD Thesis, Durham University 2002) 155-159.

⁴⁵ DfID, *The Department for International Development's Approach to Anti-Corruption* (Independent Commission for Aid Impact Report, November 2011)

⁴⁶ Marquette (n 44) 168-169. The EU's programme on anticorruption is more limited in scope in comparison to that of the United States, the United Nations, the World Bank and other IDIs. See European Commission, 'The European Union's Role in Promoting Human Rights and Democratisation in Third Countries' COM (2001) 252 final. It is worth noting that the anticorruption policies and programmes of most of these IDIs have expanded considerably since the 1990s.

⁴⁷ NORAD, *Evaluation of Transparency International* (NORAD, Oslo February 2011) 7-10.

⁴⁸ For more information on this, see <<http://www.gfintegrity.org/>> accessed 31 December 2016.

⁴⁹ For more information on this, see <<http://www.publishwhatyoupay.org/>> accessed 31 December 2016.

⁵⁰ Mills' 2012 thesis show that this heightened attention to corruption went beyond the actions of IDIs and CSOs. There was also a significant increase in media attention to corruption beginning from the late 1990s. See Linnea Cecilia Mills, 'Questionable and Unintended Consequences: A Critical Assessment of the International Donor Community's Fight against Corruption in Sub-Saharan Africa' (PhD Thesis, London School of Economics and Political Science 2012) 13-15.

in corruption because of technological advances made in the last few decades, Gonzalez de Asis notes that recent rule of law programmes have focused on training judges, prosecutors and support staff on the mechanics of the new legal domain. This includes how to interpret and otherwise deal with the various kinds of information they must work with to address corruption.⁵¹

As noted above, much credit for the rise of anticorruptionism is attributable to the World Bank. It is therefore necessary to briefly discuss the components of the Bank's anticorruption strategy as part of the global agenda. It is however worth noting that, whilst the Bank's strategy for directly dealing with corruption was released in 1997,⁵² components of its earlier-established governance reforms were also directed at addressing corruption. These governance reforms which were introduced to strengthen broader economic development policies, dealt with corruption indirectly.⁵³ The agenda of promoting good governance was however a precursor to the Bank's involvement in anticorruption efforts. It remains the broader framework within which the Bank's anticorruption strategy is expressed. It is therefore not unusual to find good governance being used as synonymous to anticorruption and used as being antithetical to corruption.⁵⁴ Indeed, the understanding and application of good

⁵¹ Gonzalez De Asis (n 43) 12.

⁵² World Bank, *Helping Countries Combat Corruption: The Role of the World Bank* (PREM, September 1997) 3.

⁵³ The major reason for this was that the Bank, at the time of the introduction of the governance agenda around 1989-90, still considered corruption a political issue which was outside its mandate. However, even though the governance reforms were conceptualised as applicable to the realm of the economy, the scope of their application meant that they touched on issues of corruption, especially in terms of prevention.

With the later direct focus of the Bank on anticorruption, most of the governance reforms are now recognised as having both a direct and indirect impact on tackling corruption and remain an integral part of the Bank's overall anticorruption reform strategy.

The origin of the governance agenda of the Bank and the progression of the Bank's focus from governance reforms with economic objects to directly dealing with corruption years later are discussed in detail in section 6.1 of the next chapter.

⁵⁴ See for instance, the use of good governance and anticorruption interchangeably in Daniel Kaufmann, 'Human Rights and Governance: The Empirical Challenge' in Philip Alston and Mary Robinson, *Human Rights and Development: Towards Mutual Reinforcement* (OUP 2005) 352-402

governance to broadly describe efforts aimed at tackling corruption goes beyond the Bank to include other IDIs. For this purpose, its meaning and place within the global anticorruption agenda will be examined here together with the Bank's anticorruption strategy.

5.3.1 Good Governance

The concept of governance is not one that lends itself to a straightjacket definition, even though there appears to be a reasonable level of consensus on the general principles and policies that good governance entails.

The authors of the World Bank Governance Indicators define governance as 'the traditions and institutions by which authority in a country is exercised'.⁵⁵ The UNDP provides a more comprehensive definition of governance as:

*The exercise of political, economic and administrative authority in the management of a country's affairs at all levels. Governance comprises the complex mechanisms, processes and institutions through which citizens and groups articulate their interests, mediate their differences and exercise their legal rights and obligations.*⁵⁶

⁵⁵ Daniel Kaufmann, Aart Kraay and Massimo Mastruzzi, 'The Worldwide Governance Indicators: Methodology and Analytical Issues' (2010) World Bank Draft Policy Research Working Paper 3 <<http://info.worldbank.org/governance/wgi/pdf/WGI.pdf>> accessed 3 February 2016.

⁵⁶ UNDP, 'Governance for Sustainable Development (1997) UNDP Policy Document <<http://www.pogar.org/publications/other/undp/governance/undppolicydoc97-e.pdf>> accessed 3 February 2016.

On the basis of this definition, UNDP considers its work on good governance as encompassing key institutions like the legislature, judiciary and electoral bodies, public and private sector management, decentralisation and support for local governance and civil society organisations.⁵⁷ Broadly speaking therefore, the concept of good governance has over the years become associated with a wide and varied range of institutions, policies and issues that directly and indirectly concern the proper administration of a state. It is, among other things, considered to be 'participatory, transparent and accountable. It is also effective and equitable. And it promotes the rule of law'.⁵⁸

Kaufmann, Kraay and Zoido-Lobaton consider the broad fundamental aspects of governance in their work on aggregating governance indicators at the World Bank to be the rule of law, government effectiveness, and issues of graft.⁵⁹ Other areas which are considered in the World Bank's work on evaluating governance in countries include voice and accountability, political stability, absence of violence and regulatory quality. The standard of budgetary and financial management, the efficiency of revenue mobilisation and public expenditure and transparency and accountability are also considered.⁶⁰ In terms of the construction of governance, there has been a fluid expansion of the Bank's conception of governance over the years covering issues such as transparency, participation, accountability, freedom and rule of law.⁶¹ Within this broad framework, the policy work of the Bank has been built around the four main

⁵⁷ *ibid.*

⁵⁸ *ibid.*

⁵⁹ Daniel Kaufmann, Aart Kraay and Pablo Zoido-Lobaton, 'Aggregating Governance Indicators' (1999) World Bank Policy Research Working Paper 2195, 5
<<http://info.worldbank.org/governance/wgi/pdf/govind.pdf>> accessed 20 January 2017.

⁶⁰ *ibid.*

⁶¹ *ibid.*

areas of public sector management, accountability, the legal framework for development and information and transparency.⁶²

The IMF describes governance as the broad range of interactions between government and citizens. The initial focus of its work on governance had two basic aspects that are in conformity with its expertise and its mandate to be involved only in issues that have current and potential impact on the macroeconomic performance of member countries.⁶³ These areas entail improving the management of public resources and supporting the development and maintenance of stable and transparent economic and regulatory environments that are conducive to efficient private sector activities.⁶⁴ The former means reforms in public sector institutions like the central bank, civil service and treasury. The latter deals with actions that affect price systems, general banking systems and exchange and trade regimes.⁶⁵

However, the IMF has since 1997 expanded its governance programme by including anti-money laundering efforts,⁶⁶ and providing corruption-specific governance advice as part of its surveillance function.⁶⁷ A concern for good governance has also been

⁶² World Bank, *Governance and Development* (Washington D.C 1992).

⁶³ International Monetary Fund, 'The Role of the IMF in Governance Issues: Guidance Note' (Approved by the IMF Executive Board, 25 July 1997) <<http://www.imf.org/external/pubs/ft/exrp/govern/govindex.htm>> accessed 2 November 2015.

⁶⁴ International Monetary Fund, 'Good Governance: The IMF's Role' (Washington, D.C. 1997) <<http://www.imf.org/external/pubs/ft/exrp/govern/govindex.htm>> accessed 2 February 2016.

⁶⁵ Specific policies designed to achieve these dual objectives include 'better fiscal expenditure control, publication of audited accounts of government agencies and state enterprises, streamlined and less discretionary revenue administration, greater transparency in the management of natural resources, the publication of audited central bank accounts and better enforcement of banking supervision' See IMF, 'IMF and Good Governance: Fact Sheet' (10 September 2015) <<http://www.imf.org/external/np/exr/facts/gov.htm>> accessed 2 November 2015.

⁶⁶ International Monetary Fund, 'IMF Board Discusses the Fund's Intensified Involvement in Anti-Money Laundering and Combating the Financing of Terrorism' (Washington D.C. 2001) <<http://www.imf.org/external/np/sec/pn/2001/pn01120.htm>> accessed 2 February 2016.

⁶⁷ International Monetary Fund, 'Factsheet: IMF Surveillance' (Washington D.C. 23 September 2015) <<http://www.imf.org/external/np/exr/facts/surv.htm>> accessed 2 February 2016.

integrated into the way the IMF discharges its lending function.⁶⁸ Reforms to improve governance and address corruption have increasingly become a part of IMF lending conditionality. This is however only to the extent that such conditions are essential to the realisation of the prospects of broader policy implementation.⁶⁹ An equally crucial part of the IMF's work on good governance is in the area of technical assistance. Assistance in enhancing policy implementation capacity in sectors like tax and customs administration is considered to have direct bearing on good governance. The IMF also provides technical assistance to countries who ask for same in implementing codes of transparency in fiscal and financial policies, with such codes considered useful tools for controlling corruption.⁷⁰

The emphasis on promoting good governance in anticorruption efforts in the last couple of decades is based on the understanding that a wide range of governance-related issues like those mentioned above are directly or indirectly integral to dealing with corruption. Pursuing good governance is therefore a recognition of the fact that laws and institutions specifically established to curb corruption will achieve little if issues like the rule of law, regulatory quality, mechanisms for budgetary and financial management and other measures that promote transparency and accountability are not put in place.

⁶⁸ Generally, the promotion of good governance by the IMF is streamlined in its relationship with member countries in the three key areas of policy advice, financial support and technical assistance.

⁶⁹ Harold James, 'From Grandmotherliness to Governance: The Evolution of IMF Conditionality' (1998) 35(4) Finance and Development 44-47.

⁷⁰ Anton Op De Beke, 'IMF Activities to Promote Good Governance and Combat Corruption: An Overview (2002) IMF, Policy Development and Review Department 1 <http://web.worldbank.org/archive/website00818/WEB/PDF/OP_DE_BE.PDF> accessed 2 November 2015.

Within this broad conception of good governance therefore, programmes aimed at controlling corruption are often pursued specifically under the twin frameworks of transparency⁷¹ and accountability.⁷² These will therefore be the major focus of the discussion of good governance measures, especially when looking at the Nigerian context later in section 5.4 below.

5.3.2 The World Bank's Anticorruption Strategy

As noted earlier, the World Bank was the foremost IDI to articulate a strategy to directly tackle corruption. This was in 1996 and within a year, the Bank released its first anticorruption strategy. The document noted that the Bank would address corruption at four levels, namely:

- Preventing fraud and corruption within Bank-financed projects.
- Helping countries that request Bank support to reduce corruption.

⁷¹ Transparency in governance relates to actions and mechanisms that ensure that citizens have access to and understand the actions of government and the basis of their decision-making. The various ways in which this can be achieved include accurate and reliable financial reporting, publication of accounts and audit reports of government departments and agencies, broadcasting of parliamentary debates, enabling legal access to government records, etc.

See Friedl Weiss and Silke Steiner, 'Transparency as an Element of Good Governance in the Practice of the EU and the WTO: Overview and Comparison' (2006) 30(5) *Fordham International Law Journal* 1545-1586.

⁷² Accountability denotes the obligation to explain and take responsibility for decisions and actions. Accountability in government is achieved by mechanisms and approaches that ensure that the activities and outputs of government meet intended and agreed goals and standards

The concepts of transparency and accountability work conjointly since governments can only be held accountable where citizens have access to and possess adequate information on the performance records of government, their decisions and justifications. Apart from being integral to the sustenance of democratic governance, transparency and accountability are essential for preventing corruption as the lack of both incentivises and creates more scope for corruption to thrive.

See OECD, *Accountability and Democratic Governance: Orientations and Principles for Development* (DAC Guidelines and Reference Series, OECD Publishing 2014) 19-29.

- Taking corruption more explicitly into account in country assistance strategies, country lending considerations, policy dialogue, analytical work, and the choice and design of projects.
- Adding voice and support to international efforts to reduce corruption.⁷³

The document noted that although dealing with corruption in each area required different strategies, each level had obvious links with the others. For instance, addressing corruption in Bank-financed projects should be done in ways that help countries build their procurement and financial management systems. Also, the Bank's efforts in helping design and implement anticorruption strategies would be enhanced by more active participation in international efforts to combat corruption.⁷⁴ However, the most relevant dimension in terms of its impact on anticorruption efforts in countries is the second. The Bank's strategy for helping countries combat corruption involve building their capacity in the following five areas:

- Economic Policy and Management (deregulation, tax simplification, macroeconomic stability and demonopolisation)
- Administrative and Civil Service Reform (pay and meritocracy, decentralisation and community action)
- Financial Controls (financial management, audit and procurement)
- Legal and Judicial Reform (legal framework, judicial independence, judicial strengthening, alternative dispute resolution mechanisms)

⁷³ World Bank (n 52) 3.

⁷⁴ *ibid* 4.

- Public Oversight (parliamentary oversight, civil society and media, independent agencies/NGOs).⁷⁵

As the discussion below will show, Nigeria has implemented a substantial amount of reforms in accordance with the Bank's anticorruption strategy, and also those of other IDIs. This has been made imperative by the introduction of governance conditionality in dealings between IDIs and countries.⁷⁶ This is especially so as the global attention to corruption in the late 1990s coincided with return of Nigeria to democratic rule in 1999.⁷⁷ The restoration of amiable relations between the country and international institutions in the light of this and the enthusiasm that followed the return to democracy meant that that country was quick in implementing the governance and anticorruption reforms that were particularly central in the field of development at the time.

Overall, the broad nature of the composition of the current anticorruption agenda as examined above shows that it is not only designed to cover institutions established

⁷⁵ World Bank, *Helping Countries Combat Corruption: Progress at the World Bank Since 1997* (PREM, June 2000) 22. It is worth noting that the policy of the African Development Bank on good governance and anticorruption clearly mirrors the policies of the World Bank in this regard. See Africa Development Bank, 'Bank Policy on Good Governance' (November 1999) <https://www.afdb.org/fileadmin/uploads/afdb/Documents/Policy-Documents/21-EN-Bank_Group_Policy_on_Good_Governance.pdf> accessed 4 August 2017.

Marquette notes that the homogeneity of these policies is by no coincidence as it was a direct result of a G7 statement on corruption issued in 1996 urging regional banks to formulate policy based on the principles established by the World Bank. See Marquette (n 44) 140.

⁷⁶ World Bank, *Helping Countries Combat Corruption: Progress at the World Bank* (n 75) 5. See also Tara Polzer, 'Corruption: Deconstructing the World Bank Discourse' (2001) Development Studies Institute Working Paper 01-18, 9-10

<<http://www.lse.ac.uk/internationalDevelopment/pdf/WP/WP18.pdf>> accessed 1 February 2017; Gerald J. Schmitz, 'Democratisation and Demystification: Deconstructing "Governance" as a Development Paradigm' in David B. Moore and Gerald J. Schmitz (eds), *Debating Development Discourse: Institutional and Popular Perspectives* (Macmillan Press Ltd 1995) 54-90.

⁷⁷ Before 1999, the country had been under successive military regimes for 16 years. This led to a reasonable level of isolation of the country by certain IDIs, including the World Bank. Due to the failure of the country to fully implement its economic reform conditionalities, its inability to service its debt and the general irresponsibility shown by some military leaders, the Bank reduced its engagement with Nigeria throughout most of the 1990s until the return to democracy in 1999. See Jonathan G. Joseph, 'World Bank and the Crises of Development in Nigeria (1999 to 2008)' (M.Sc. Dissertation, University of Nigeria 2010) 32-36.

principally to address corruption. It includes other actors, institutions and initiatives that generally enhance democracy, human rights and development. These are referred to as supporting frameworks in this work and include the judiciary, constitutional mechanisms for legislative oversight, whistleblowing initiatives, transparency and accountability institutions, civil society and the media. Some of them play complementary roles in addressing corruption whilst others are understood to have an indirect impact in tackling corruption. The analysis of the anticorruption regime in Nigeria that follows looks at legal and institutional reforms established specifically to tackle corruption in the third moment of law and development. However, reference will be made to such supporting institutions where necessary, and to the extent that they contribute to the discourse of the legal and institutional frameworks established to address corruption.

5.4 The Anticorruption Regime in Nigeria

The discussion here focuses on institutions and initiatives through which corruption is addressed during the third moment of law and development. It commences first with a consideration of the robust legal framework which provides the significant infrastructure for anticorruption efforts in the country. The consideration of the legal framework is necessary to provide a proper background to the discussion of institutions and initiatives that follows. This is also important in the broader context of the conception of development under the new developmentalism. As discussed in section 5.2 above, legal reforms now constitute a central component of development

agenda. In addition to the erstwhile instrumental role of law in development - exemplified in terms of providing the infrastructure for anticorruption efforts - legal reforms are now a substantive indicator of development policy. Hence, the legal framework for tackling corruption merits especial consideration in the context of this work.

5.4.1 Legal Framework

The legal framework for anticorruption in Nigeria is comprised of constitutional and legislative provisions. Before considering these however, it is necessary to note the international treaties on corruption to which the country is party, as the nature and content of the obligations derived from such instruments impact on the local legal framework for anticorruption.

5.4.1.1 Relevant International Instruments

The first is the United Nations Convention Against Corruption (UNCAC).⁷⁸ As of December 2016 the Convention has 181 parties. Nigeria became signatory to UNCAC on 9 December 2003 and ratified the Convention on 14 December 2004.⁷⁹ UNCAC remains the most comprehensive international instrument yet on anticorruption. Its substantive provisions are divided into the key issues of prevention, criminalisation,

⁷⁸ United Nations Convention Against Corruption (adopted 31 October 2003, entered into force 14 December 2005) 2349 UNTS 41.

⁷⁹ UNODC, 'United Nations Convention against Corruption: Signature and Ratification Status as of 12 December 2016' <<https://www.unodc.org/unodc/en/treaties/CAC/signatories.html>> accessed 29 April 2017.

international cooperation, asset recovery and implementation mechanisms. Whilst there are certain innovative and proactive provisions in some of the other international instruments dealing with corruption, UNCAC is a point of reference due to its wide coverage and extensive provisions on various facets of anticorruption.

Next is the African Union Convention on Preventing and Combating Corruption.⁸⁰ As of April 2016, 48 of the 54 members states of the AU had signed the Convention with 37 ratifications. Nigeria became a signatory to the Convention on 16 December 2003 and ratified it on 26 September 2006.⁸¹ Much like UNCAC, the AU Convention provides for preventive measures, criminalisation, international cooperation and asset discovery. The AU Convention however emphasises bribery by private sector entities, thereby providing wider coverage of both demand and supply sides of corruption.⁸² Other unique provisions of the AU Convention include those dealing with mandatory requirement for declaration of assets by public officials and restrictions on the immunity of such public office holders.⁸³ The related issues of access to information and whistle-blower protection are also dealt with in Articles 9 and 5 respectively of the Convention.

⁸⁰ African Union Convention on Preventing and Combating Corruption (adopted 11 July 2013, entered into force 5 August 2006) (2004) 43(1) ILM 5 (AU Convention).

⁸¹ AU, 'African Union Convention on Preventing and Combating Corruption: Status List' <<https://www.au.int/web/en/treaties/african-union-convention-preventing-and-combating-corruption>> accessed 29 April 2017.

⁸² Article 11 of the Convention requires States to, amongst other things, adopt legislative and other measures to prevent and combat acts of corruption committed in and by agents of the private sector.

⁸³ Article 7 of the AU Convention. Under this provision, designated public officials are to declare their assets at the time of assumption of office, during and after their term in public office. States are also to establish committees or other bodies to establish and monitor the implementation of a code of conduct for public officials. With regards to the issue of immunity, Article 7(5) provides that 'subject to the provisions of domestic legislation, any immunity granted to public officials shall not be an obstacle to the investigation of allegations against and the prosecution of such officials.'

It is worthy of note that the AU makes the most extensive reference to human rights in the context of corruption. The preamble to the convention takes cognisance of the need to foster the promotion of economic, social and political rights in line with the provisions of the African Charter and other human rights instruments. Article 3 states respect for human and peoples' rights as one of the founding principles of the Convention. Although these provisions are innovative by recognising the nexus between corruption and human rights, the lack of substantive provisions in the Convention on how this relationship might prove important in anticorruption efforts - the object of the Convention - diminishes their significance. This notwithstanding, these provisions can prove useful in advancing the evolving paradigm of a rights-based approach to anticorruption. This will be explored further in chapter seven.

Another international anticorruption instrument that applies to Nigeria but is yet to be incorporated into the legal framework is the Economic Community of West African States (ECOWAS) Protocol on the Fight Against Corruption. It was adopted on 21 December 2001 by ECOWAS Heads of States and is expected to enter into force upon ratification by at least 9 signatory states, which is yet to take place. The Protocol was ratified by Nigeria on 23 August 2002 and will therefore become part of the legal framework of the country when it enters into force. With specific application to the ECOWAS sub-region, the Protocol covers general issues such as requiring states to adopt necessary legislative measures for criminalising bribery in the public and private sectors and laundering of proceeds of corruption. It also deals with measures for

member countries to cooperate on legal assistance and law enforcement and to ensure the protection of victims of corruption.⁸⁴

In terms of the application of these instruments within the legal framework of Nigeria, it is important to examine Section 12 of the Constitution of the country.⁸⁵ It provides that treaties to which Nigeria is party shall only have the force of law when enacted as an Act of the National Assembly. None of the above instruments have yet been enacted into law in accordance with this provision. In line with the dualist doctrine of international law, the argument can therefore be made that they do not constitute the legal regime for anticorruption within Nigeria. This is a factor that has led to calls for the domestication of these instruments to enhance anticorruption efforts.⁸⁶ However, the mere lack of domestication does not mean that in effect these instruments are not binding on the country. By duly signing and ratifying these conventions, the country has clearly expressed its consent to be bound by the obligations contained in them. Moreover, it is an established principle of international law that a country 'may not invoke the provisions of its internal law as justification for its failure to perform a treaty.'⁸⁷ In any case, this argument is of little practical significance considering most of the provisions of these conventions have been expressed in the various laws passed by the National Assembly to address corruption.

⁸⁴ The provision on mutual legal assistance and law enforcement cooperation is found in Article 15, whilst Article 9 of the Protocol provides for assistance and protection of victims.

⁸⁵ Constitution of the Federal Republic of Nigeria 1999.

⁸⁶ Mohammed Albakariyu Kabir, 'Anti-Corruption Conventions in Nigeria: Legal and Administrative Challenges' (2015) 9(4) International Science Index, Law and Political Sciences 1174-1184.

⁸⁷ Article 27 of the Vienna Convention on the Law of Treaties (adopted 23 May 1969, entered into force 27 January 1980) 1155 UNTS 331.

5.4.1.2 *Constitutional Provisions*

The relevant provisions in the constitution are broadly geared towards preventing corruption in the public sector and setting standards to ensure transparency, accountability and ethical behaviour for public office holders.

Part 1 of the Fifth Schedule to the 1999 Constitution provides for a Code of Conduct for Public Officers.⁸⁸ The salient provisions of the code include Paragraph 1 which states that, “a public officer shall not put himself in a position where his personal interest conflicts with his duties and responsibilities.” The code also prohibits public officers from maintaining or operating a bank account in a foreign country.⁸⁹ It further directs that a public officer shall not ask for or accept property or other benefit of any kind for himself or another on account of something done in the discharge of his duties.⁹⁰ The offering of a bribe by any person to a public officer for the granting of any favour in the discharge of the public officer’s duties is also prohibited.⁹¹ Public officers are also enjoined not to abuse their office by doing or directing to be done, any arbitrary act which is prejudicial to the rights of any other person.⁹² Other relevant provisions of the Code include prohibitions on public officials from holding two paid public offices, on certain retired public officials from taking employment in foreign companies and on pensioners from receiving remuneration from public funds in addition to their pension.⁹³

⁸⁸ Under the Constitution, public officers for the purpose of the Code of Conduct are the president, vice president, president and deputy president of the senate, speaker and deputy speaker of the house of representatives, governor and deputy governors, amongst others.

A full list of the public officers to which the code applies can be found in Paras. 1-9, Pt II of the Fifth Schedule to the Constitution.

⁸⁹ Par. 3, Pt.1 of the Fifth Schedule to the Constitution.

⁹⁰ *ibid.* Par. 6.

⁹¹ *ibid.* Par. 8

⁹² *ibid.* Par. 9.

⁹³ See generally Pt. 1 of the Fifth Schedule to the Constitution.

An important mechanism for preventing corruption contained in the code and worth a special mention is the provision for assets declaration. This provision is found in Paragraph 11 of Part 1 of the Fifth Schedule to the Constitution. It instructs all public officers to submit to the Code of Conduct Bureau a written declaration of all their properties, assets and liabilities, including those of their unmarried children below the age of eighteen. The declaration is to be done immediately after taking office and thereafter at the end of every four years, and at the end of the term of office. Failure to make such declaration or the making of false declaration is considered a breach of the code of conduct for public officers. The constitution does not however require the declaration to be made public, neither is the Code of Conduct Bureau required to publicise declarations made, or even grant access to such declarations on request. It is therefore almost impossible for private citizens to monitor or enforce compliance with the provision on assets declaration.

Certain public officers however do publicise their assets declaration either on their own volition or in response to public pressure. For instance, the current president of Nigeria, Muhammadu Buhari and his deputy Yemi Osinbajo voluntarily made public details of the assets which they declared to the Code of Conduct Bureau.⁹⁴ Cases like this are however few and there is no mechanism to confirm the veracity of such declarations. Hence, whilst the directive to declare assets is one that promotes accountability and transparency in theory, the implementation mechanism provided for under the constitution has apparent flaws. Leaving the outcome of the mechanism

⁹⁴ The Punch, 'Details of Buhari, Osinbajo Assets Declaration' (Lagos, 3 September 2015) <<http://www.punchng.com/news/details-of-buhari-osinbajo-assets-declaration/>> accessed 4 September 2015.

of assets declaration to the discretion of public officials and the Code of Conduct Bureau seriously jeopardises its effectiveness. This is especially so due to the high likelihood of political interference in the work of anticorruption institutions as the discussion below shows.

The Fifth Schedule to the Constitution refers to the Code of Conduct Bureau to which allegations that a public officer has breached the provisions of the Code are to be made.⁹⁵ It also establishes the Code of Conduct Tribunal with the responsibility to entertain and adjudicate on such allegations, and to impose a range of appropriate sanctions upon conviction.⁹⁶

Furthermore, the Constitution contains provisions requiring public office holders to take oaths of office. The Seventh Schedule to the Constitution contains oaths of allegiance and of office to be taken by a wide range of public servants including the president, governors of states, the vice president, deputy governors, ministers, commissioners and special advisers. There are also separate oaths for members of the national assembly and state houses of assembly and for judicial officers. In essence, persons who are elected or appointed into public offices recognised by the constitution are required, by the various constitutional provisions creating such offices, to take an oath of office.⁹⁷

⁹⁵ The Code of Conduct Bureau is originally established by The Code of Conduct and Tribunal Act, Cap. C15, Laws of the Federation of Nigeria 2004.

⁹⁶ Paras. 12 and 15 respectively of the Fifth Schedule to the Constitution. The effectiveness of the Bureau and the Tribunal in carrying out their constitutional responsibilities in this respect is considered in detail as part of the institutional framework for anticorruption below.

⁹⁷ See Sections 52, 94, 135, 140, 142, 180, 185, 187, 194, 290 of the 1999 Constitution of Nigeria.

The significance of this lies in the fact that these oaths require those taking same to act in ways that do not abuse the powers entrusted in them by the constitution for their personal benefit. In other words, they are obligated by the oath to act in a non-corrupt manner. The oath of office for the president, for instance, requires him to solemnly swear amongst other things, 'not to allow [his] personal interest to influence [his] official conduct or [his] official decisions'. The president further commits to 'strive to preserve the Fundamental Objectives and Directive Principles of State Policy contained in the Constitution'.⁹⁸ A relevant fundamental objective of the Nigerian state contained in Section 15(5) of the Constitution is that 'the state shall abolish all corrupt practices and abuse of power'. There is also a further commitment in the oath to abide by the Code of Conduct examined above.⁹⁹

Another constitutional provision of relevance to anticorruption efforts is the creation of the office of the Auditor-General at both the federal and state levels.¹⁰⁰ The Auditor-General for the Federation is empowered to audit and report on the accounts of the Federation and of all offices and courts and to submit such reports to the National Assembly.¹⁰¹ For the purpose of performing this function, the Auditor-General is to have access to all books, records, returns and other relevant documents.¹⁰² Upon receipt of the audit report, the National Assembly is empowered by the Constitution to direct the investigation of the conduct of any person, authority, ministry or government department with respect to the disbursement or administration of funds appropriated or to be appropriated by it. This power is to be exercised, amongst other reasons, for

⁹⁸ Seventh Schedule to the Constitution.

⁹⁹ *ibid.*

¹⁰⁰ Sections 85-89 and Sections 125-129 provides for the establishment, appointment, tenure and powers of the Auditor-General for the federal government and state governments respectively.

¹⁰¹ Section 85 of the Constitution. Similar provision is made for the states in Section 125.

¹⁰² *ibid.*

the purpose of exposing corruption, inefficiency or waste in the disbursement or administration of appropriated funds.¹⁰³ This function which is an extension of the constitutional doctrine of checks and balances to the objective of checking corruption has the potential to ensure transparency and accountability in the use of public funds. It is however a mechanism that has suffered much neglect in preference for newer specialised anticorruption institutions.

In addition, it is worth noting that the Nigerian Constitution makes specific reference to addressing corruption as one of the fundamental objectives and directive principles of state policy. The Constitution provides that the state shall abolish all corrupt practices and abuses of power.¹⁰⁴ However, the constitution itself makes this provision nugatory by providing that no issue or question as to whether any act or omission or as to whether any law or judicial decision is in conformity with the fundamental objectives and directive principles provided for in the constitution shall be entertained by the courts.¹⁰⁵ In essence, the provision that the state shall abolish corruption and all the other laudable objectives stated in Chapter 2 of the Constitution are not justiciable. Citizens therefore have no legal standing to challenge any government action - legislative, executive or judicial - for non-compliance. The constitutional objective of the state to address corruption, in the light of this, can only be considered aspirational. It has been argued that a binding effect may be deduced from the inclusion of these objectives in the constitution to the extent that a failure to enforce them may be considered a breach of public trust and the oaths of office of

¹⁰³ Section 88 of the Constitution. Again, similar powers are granted to the state Houses of Assembly under Section 128 of the Constitution.

¹⁰⁴ Section 15 (5) of the Constitution.

¹⁰⁵ Section 6 (6) of the Constitution.

public officers.¹⁰⁶ Without any judicial recognition of this interpretation, the fact remains that the lack of justiciability makes it possible for these otherwise significant provisions to be ignored without legal consequence.

5.4.1.3 *Legislative Provisions*

The National Assembly has passed an appreciable number of laws on corruption since the Nigeria's return to democratic rule in 1999. These laws criminalise a wider range of corrupt acts than those that existed under the pre-existing criminal and penal codes.¹⁰⁷ More significantly, they establish a wide range of institutions and initiatives to tackle corruption, and push through various good governance reforms promoted by IDIs like the World Bank and IMF.

For the purpose of this discussion, the legislative framework will be considered in two broad categories: laws that deal with corruption generally and those that deal specifically with particular types of corrupt conduct¹⁰⁸ or particular issues of relevance to anticorruption efforts.¹⁰⁹ Due to how central they are to the anticorruption regime, the first category will be discussed in detail here, whilst the latter will be considered at various points in the chapter when the respective issues to which they apply are considered. Laws in the first category are the Corrupt Practices and Other Related

¹⁰⁶ Taiwo A. Olaiya, 'Interrogating the Non-Justiciability of Constitutional Directive Principles and Public Policy Failure in Nigeria' (2015) 8(3) *Journal of Politics and Law* 23-35.

¹⁰⁷ This refers to provisions dealing with corruption in the public sector in Chapter 12 of the Criminal Code, Cap C38 Laws of the Federation of Nigeria 2004 (applicable in the south of the country) and Chapter 10 of the Penal Code Act, Cap P3 Laws of the Federation of Nigeria 2004 (applicable in the north of the country).

¹⁰⁸ Advance fee fraud and money laundering for instance.

¹⁰⁹ Examples of this would include issues like good public procurement practices and transparency in governance.

Offences Act 2000¹¹⁰ and the Economic and Financial Crimes Commission (Establishment) Act, 2004.¹¹¹

The Corrupt Practices and Other Related Offences Act 2000 (ICPC Act)¹¹² was the first major anticorruption legislation that was enacted following the rise of anticorruptionism. The Act established the Independent Corrupt Practices and Other Related Offences Commission with the responsibility to receive and investigate complaints and prosecute offenders who violate the provisions of the Act.¹¹³ Other responsibilities of the Commission include advising on, assisting and reviewing the practices, systems and procedures of public bodies on ways by which corruption or fraud may be addressed. Furthermore, the Commission is to educate the public on corruption, as well as enlist and foster public support in tackling corruption.¹¹⁴

The application of the Act focuses on corruption in the public sector.¹¹⁵ It defines corruption as including bribery, fraud and other related offences.¹¹⁶ An interpretation of the exact meaning of these words is not stated in the Act. However, an inference of their meaning can be made from the offences provided for under the Act which include giving or accepting gratification, fraudulent acquisition or receipt of property and making false statements or returns.¹¹⁷ The Act also confers on the Commission

¹¹⁰ Cap. C31 Laws of the Federation of Nigeria 2010.

¹¹¹ Cap. E1 Laws of the Federation of Nigeria 2010.

¹¹² The Act is often referred to as the ICPC Act, derived from the Independent Corrupt Practices and Related Offences Commission (ICPC) which was established by the Act. The use of ICPC Act in the rest of this work should therefore be understood as referring to the Corrupt Practices and Other Related Offences Act.

¹¹³ Section 6 of the Act. By the combined effect of Section 6 and 26 (2) of the Act, the Act, despite its bid to be a comprehensive legislation on anticorruption, recognised the existence and validity of other laws on corruption.

¹¹⁴ *ibid.*

¹¹⁵ See the provisions for offences under Sections 8-26 of the Act.

¹¹⁶ *ibid* Section 2.

¹¹⁷ See Sections 9 to 27 for general offences and penalties under the Act.

powers of investigation, search, seizure and arrest when carrying out its duties.¹¹⁸

Also, it provides for evidentiary matters in corruption cases instituted under Act and other sundry issues.¹¹⁹

The other general legislation on corruption is the **Economic and Financial Crimes Commission (Establishment) Act, 2004** (EFCC Act). The Act created the Economic and Financial Crimes Commission (EFCC), another central anticorruption institution. In comparison to the ICPC Act, the EFCC Act has a wider scope in terms of its provisions and the responsibilities of the Commission established under it. The broad range of duties of the institution include the investigation of all financial crimes such as advance fee fraud, money laundering, counterfeiting, illegal charge transfers, futures market fraud, fraudulent encashment of negotiable instruments, computer credit card fraud and contract scams.¹²⁰ The Act bestows on the Commission complementary powers of prevention, prosecution, enforcement, freezing, seizure and forfeiture of assets derived from corrupt acts, amongst others.¹²¹ The commission is also to coordinate and enforce all laws on economic and financial crimes and the activities of any other person or authority within the scope of its broad functions.¹²²

Under the Act, economic and financial crimes are defined as referring to ‘non-violent criminal and illicit activity committed with the objective of earning wealth illegally either individually or in a group or organised manner thereby violating existing legislation

¹¹⁸ *ibid* Sections 27-42.

¹¹⁹ *ibid* Sections 53-70.

¹²⁰ The statement of the broad range of functions of the Commission is found in Section 6 of the EFCC Act.

¹²¹ *ibid*.

¹²² *ibid*.

governing the economic activities of government and its administration...¹²³ The definition of such crimes however extends to a broad range of illegal activities such as fraud, narcotic drug trafficking, money laundering, embezzlement, bribery, looting, illegal arms dealing, smuggling, human trafficking, child labour, illegal oil bunkering and illegal mining, dumping of toxic wastes and prohibited goods, open market abuse, theft of intellectual property and piracy, foreign exchange malpractices including counterfeiting of currency and tax evasion¹²⁴

As noted earlier, in addition to the ICPC Act and the EFCC Act, there are other laws that make up the legislative framework for anticorruption in Nigeria. Such laws deal with more specific issues of relevance to efforts to address corruption. These include the Money Laundering (Prohibition) (Amendment) Act 2012, the Advance Fee Fraud and Other Fraud Related Offences Act 2006, the Failed Banks (Recovery of Debts) and Financial Malpractices in Banks Act 1994 (as amended), the Banks and Other Financial Institutions (Amendment) Act 1991, the Nigeria Extractive Industries Transparency Initiative Act 2007, the Fiscal Responsibility Act 2007, the Code of Conduct Bureau and Tribunal Act 1991 (as amended) the Miscellaneous Offences Act 2004 and the Freedom of Information Act 2011.¹²⁵ The provisions of these laws cover most important facets of an anticorruption regime. These include the prevention of corruption, punishment of corrupt individuals and organisations, the enhancement of governance by improving the general efficiency of the economy and state administration, and the creation and strengthening of general democratic institutions that are relevant to anticorruption efforts.

¹²³ Section 46 of the EFCC Act.

¹²⁴ *ibid.*

¹²⁵ A number of these statutes have been amended in the course of time to take into account current realities and overcome challenges of implementation discovered over time.

This robust framework therefore provides the legal foundation for the anticorruption regime. Whilst the country has made commendable progress towards having this requisite legal infrastructure, there are obvious challenges to having such an extensive framework. For instance, these laws do not always complement each other. There are cases where they overlap and in extreme cases conflict. The effect of this and the general effectiveness of these laws in dealing with corruption will become obvious in the consideration of the institutional framework for anticorruption which is considered next.

5.4.2 Institutional Framework

The institutional framework will be discussed under two broad categories in this work: The primary institutions and complementary institutions.

Primary institutions refer to the basic anticorruption agencies established for the enforcement of the general anticorruption laws discussed above. The creation of these institutions is a mandatory provision under international instruments like UNCAC and the AU Convention on Preventing and Combating Corruption.¹²⁶ They are considered central to anticorruption efforts in any country. In Nigeria two institutions fall under this category: The ICPC and EFCC.

¹²⁶ See Article 36 of the United Nations Convention Against Corruption and Article 5 (3) of the AU Convention on Preventing and Combating Corruption.

In the second category are institutions that deal with specific issues that are significant to dealing with corruption and improving the overall regime of good governance. In comparison to the primary institutions that enforce anticorruption laws, the roles of most of these institutions are often geared towards preventing corruption and providing the ideal environment for governance to proceed free of corruption. The institutions in this category include the Code of Conduct Bureau and Tribunal, the Bureau of Public Procurement, The Fiscal Responsibility Commission and the Office of the Auditor-General.¹²⁷

5.4.2.1 *Primary Institutions*

The Independent Corrupt Practices Commission (ICPC)

The ICPC was the first major anticorruption institution established after Nigeria's return to democratic rule in 1999. It came into operation a little over a year later in September 2000. The Commission recorded about 23 prosecutions at the close of its second year and 49 at the end of its third year in September 2003.¹²⁸ However, as of March 2015, its official report indicated that it had 264 criminal cases, concluded or pending. This is in addition to a further 142 civil cases relating to the general functions of the Commission to which it was party.¹²⁹ The number of cases instituted in court should

¹²⁷ It is worth noting that, apart from these institutions, there are other institutions within the democratic governance framework of the country whose activities have some kind of impact on efforts to deal with corruption. However, these cannot all be considered within the scope of this work, and the choice has been made to discuss those institutions that are relatively central to the anticorruption regime in the country.

¹²⁸ David Uchenna Enweremadu, 'Anti-Corruption Policies in Nigeria Under Obasanjo and Yar'adua: What to do After 2011' (2010) Friedrich-Ebert-Stiftung Discussion Paper 1, 7 <<http://library.fes.de/pdf-files/bueros/nigeria/07813.pdf>> accessed 21 November 2015.

¹²⁹ ICPC, 'Status of Criminal and Civil Cases as at March 2015 - Part 1' (2015) <<http://icpc.gov.ng/downloads/>> accessed 21 November 2015.

however not be considered an indication of the success of the Commission.¹³⁰ In fact, the success rate of the Commission in terms of securing convictions is particularly poor¹³¹ and contributed to the eventual establishment of a second institution, the EFCC.

The ICPC is also bestowed with the duty of educating the public on corruption and enlisting public support in its efforts to tackle corruption.¹³² As the first major anticorruption institution, the Commission concentrated its efforts in fulfilling this function with good results in certain sectors.¹³³ In recent times however, there appears to be an over-concentration on engaging in public education to the detriment of other important functions of the Commission such as investigating and prosecuting corrupt public officials. A report by Human Rights Watch indicates that the Commission only prosecuted ten 'high profile' cases in its first ten years of operation, out of which only one had led to a conviction as of 2011.¹³⁴ The reasons for the continued discouraging performance of the ICPC is discussed under the analysis of the challenges of the regime below.

These civil cases mostly involve applications for declaratory and injunctive reliefs brought against the Commission by persons being investigated or tried, or in some cases by third parties whose propriety interest is adversely affected by the work of the Commission.

¹³⁰ Enweremadu (n 128) 8.

¹³¹ This factor and the general inefficiency of the ICPC is discussed in detail below.

¹³² See Section 6 of the ICPC Act. For a discussion of other statutory duties of the Commission, see discussion of the legal framework for anticorruption above.

¹³³ ICPC, 'Independent Corrupt Practices and Other Related Offences Commission (ICPC) Nigeria: Recent Interventions in the Education Sector (August 2013) <https://www.unodc.org/documents/treaties/UNCAC/WorkingGroups/workinggroup4/2013-August-26-28/Presentations/ICPC_INTERVENTION_IN_THE_EDUCATION_SECTOR.pdf> accessed 4 January 2016.

¹³⁴ Human Rights Watch, *Corruption on Trial? The Record of Nigeria's Economic and Financial Crimes Commission* (Human Rights Watch, August 2011) 47. The conviction secured was that of a former Chairman of the National Drug Law Enforcement Agency, Bello Lafiaji who was convicted on seven counts of financial crimes.

The Economic and Financial Crimes Commission (EFCC)

The EFCC was established in April 2003 partly as a reaction to some of the challenges faced by the ICPC and its ineffectiveness. The EFCC was granted wider powers to investigate and prosecute corruption involving public officials and private individuals and particularly crimes of a financial and economic nature.¹³⁵ As a considerable improvement on the efforts of the ICPC, between 2004 and 2006, the EFCC reportedly arraigned about 300 persons, securing 92 Convictions.¹³⁶ In 2013 alone, corruption convictions by the EFCC stood at 117, whilst the figure for 2014 was 126.¹³⁷ These figures need to be viewed with caution however, in judging the performance of the Commission. Most of the prosecutions and convictions of the Commission relate to relatively petty economic and financial offences that take place in the private sector like forgery, obtaining money by false pretences, impersonation, bank fraud, and advance fee fraud.¹³⁸ Very few cases involved the prosecution of public officials involved in corruption.

This notwithstanding, the overall performance of the EFCC is a lot better than the ICPC. The prosecution of political corruption now seems almost an exclusive reserve of the EFCC, which is a situation that negatively impacts the anticorruption regime. The EFCC was granted a scope of authority wider than that of the ICPC to deal with cases of corruption in areas not adequately covered by the ICPC Act, like economic

¹³⁵ Section 6 of the EFCC Act. Such crimes include money laundering, bank fraud, and advance fee fraud

¹³⁶ Nuhu Ribadu, 'Combating Money Laundering in Emerging Economies: Nigeria as a Case Study' (Financial Institutions Training Centre/Nigerian Institute Of International Affairs Lagos, Guest Lecture Series, 10 August 2006).

¹³⁷ EFCC 'EFCC Convictions' <<https://efccnigeria.org/efcc/index.php/convictions>> accessed 21 November 2015.

¹³⁸ *ibid.*

and financial crimes. It is therefore ironic that the EFCC is now more active in prosecuting political and bureaucratic corruption, the central mandate of the ICPC. This has pushed the ICPC to a place of relative irrelevance in efforts to deal with corruption. The ramifications of this are considered in further detail later.

5.4.2.2 *Complementary Institutions*

The Code of Conduct Bureau (CCB)

The Code of Conduct Bureau (CCB) is a body created by the Constitution.¹³⁹ As referred to above,¹⁴⁰ it has the primary responsibility of enforcing the code of conduct for public officers.¹⁴¹ The specifics of its powers include receiving asset declarations by public officials, examining the declarations to ensure compliance with the code of conduct provided for in the constitution, retaining custody of declarations made and the general enforcement of the code.¹⁴²

In terms of institutions dedicated to the prevention of corruption, the CCB is one of the oldest existing, considering it was established under the 1979 Constitution during the country's Second Republic.¹⁴³ It was later confirmed in a Decree when the country was under military rule in 1989 before its incorporation into the 1999 Constitution

¹³⁹ See Part 1 of the Third Schedule to the Constitution of the Federal Republic of Nigeria 1999.

¹⁴⁰ The establishment of the CCB was mentioned as part of the discussion of the constitutional framework for anticorruption in Nigeria in section 5.4.1.2 above.

¹⁴¹ Part 1 of the Fifth Schedule to the Constitution makes copious provisions for a code of conduct for public officers in Nigeria.

According to Part II of the Fifth Schedule to the Constitution, public officers for the purpose of the Code of Conduct are the president, vice president, president and deputy president of the senate, speaker and deputy speaker of the house of representatives, governor and deputy governors, amongst others. A full list of the public officers to which the code applies can be found in Paras. 1-9, Pt II of the Fifth Schedule to the Constitution.

¹⁴² Paragraph 3 of Part 1 of the Third Schedule to the Constitution.

¹⁴³ See Part 1 of the Fifth Schedule to the Constitution of the Federal Republic of Nigeria 1979.

following Nigeria's return to democratic rule.¹⁴⁴ Accessing its effectiveness in implementing the code of conduct for public officers is rather complicated. This is due to the limited attention given to its role and some perennial challenges it faces. It is estimated that Nigeria has over two million public officials whose conduct the CCB is expected to oversee.¹⁴⁵ Issues of underfunding and lack of manpower and expertise mean that it is almost impossible for the Bureau to track and verify all assets declarations made by public officials; a fact which has been pointed out by its leadership.¹⁴⁶

This notwithstanding, the above challenges hardly justify the fact that there are only a handful of cases of false declaration of assets that the Bureau has investigated or uncovered since its establishment. This is disturbing when considered in the context of the numerous cases of corruption by public officials that come to light frequently, and are accordingly prosecuted by primary anticorruption agencies like the EFCC. Since such corrupt public officials are expected to have declared their assets before and after holding public office, the failure or inability of the CCB to discover cases of false declarations or general noncompliance with the Code questions its effectiveness. This has made its role within the institutional framework for anticorruption appear increasingly nominal. Public officers, it seems, simply make declarations of their assets, truthfully or otherwise, in fulfilment of the provisions of the constitution with no ramifications. The powers of the CCB to ensure the veracity of such declarations and their compliance with the code are rarely used.

¹⁴⁴ See Code of Conduct Bureau and Tribunal Act, Cap 58, Laws of the Federation of Nigeria 1990.

¹⁴⁵ Human Rights Watch (n 134) 49.

¹⁴⁶ *ibid* 49-50.

The Bureau can also, where it considers it appropriate upon receiving and investigating a complaint of a possible breach of the Code, refer the matter to the Code of Conduct Tribunal (CCT).¹⁴⁷ This is also a power that is seldom used by the CCB.

The Code of Conduct Tribunal (CCT) is also established by the Constitution¹⁴⁸ with powers to interpret the provisions of the constitution on the code of conduct for public officers. It is worth noting that the CCT should ordinarily not be categorised as an institution established for the prevention of corruption due to the adjudicatory nature of its functions. However, it is discussed here because of its role as a complementary tribunal for the CCB. It is empowered to hear complaints on the contravention of the Code and impose punishments on offenders. These include vacation of office or seat in a legislative house, disqualification from membership of a legislative house or from holding any public office for a period not exceeding ten years and the seizure and forfeiture of property acquired in abuse of office.¹⁴⁹ A prerogative of mercy cannot be exercised in favour of any person convicted and punished by the CCT.¹⁵⁰

Like its sister institution the CCB to which its jurisdiction is tied, the CCT has remained largely ineffective within the institutional framework against corruption.¹⁵¹ Overall therefore, the framework for dealing with the breach by public officers of the code of

¹⁴⁷ Paragraph 3 of Part 1 of the Third Schedule to the Constitution.

¹⁴⁸ Section Paragraph 15 of the Part 1 of the Fifth Schedule to the Constitution. An earlier reference to the CCT in this work can be found in section 5.4.1.2 as part of the discussion of the constitutional framework for anticorruption in Nigeria.

¹⁴⁹ Paragraph 18 of the Part 1 of the Fifth Schedule to the Constitution.

¹⁵⁰ *ibid.*

¹⁵¹ For instance, the progress report of both institutions in 2012 shows a less than 5 percent conviction rate for the few cases brought before the tribunal. See Code of Conduct Bureau, 'Progress Report' <http://www.ccb.gov.ng/index.php?option=com_content&view=article&id=86&Itemid=500> accessed 29 April 2017.

conduct is essentially ineffective. The failure of these preventive institutions inevitably puts undue strain on primary anticorruption agencies such as the ICPC and EFCC. A proper scrutiny of assets declared by public officers and the prosecution of those whose means after office cannot be justified by reference to their income whilst in office, would serve as a deterrent for illegal and unchecked acquisition of wealth by most public officers. This however does not occur and the ineffectiveness of the CCB and CCT is largely blameworthy in this respect.

Furthermore, in *Ogbuagu vs. Ogbuagu*,¹⁵² the Supreme Court held that a private citizen cannot challenge a public officer for violating the Code. The court noted that the purpose of the code is to protect public interest and therefore, it does not vest in private individuals a right or interest on which relief could be claimed. The only option left for a private citizen to enforce the Code is to bring an allegation of a breach before the CCB. It would appear, from the wording of the constitution, that the Bureau can exercise discretion on whether to investigate such allegation. It can further decide on whether such allegation should be brought before the CCT.¹⁵³ This is therefore, yet another factor that seriously hampers the effectiveness of this mechanism as a viable tool for dealing with corruption. Leaving its enforcement to an institution which has proved to be ineffective over the years and which is exposed to political interference – as the discussion below will show - jeopardises the prospects of the mechanism provided by the Code.

¹⁵² [1981] 2 NCLR 680.

¹⁵³ This is one of the areas where a rights-based approach - considered in chapter seven - would improve the situation for anticorruption efforts by providing a means through which private individuals can bring cases in court for corruption.

The Bureau of Public Procurement (BPP)

The Bureau of Public Procurement (BPP) was established as a regulatory body responsible for monitoring and exercising general oversight over public procurement in Nigeria by the Public Procurement Act 2007.¹⁵⁴ Its stated objectives are:

- (a) The harmonisation of existing government policies and practices on public procurement and ensuring probity, accountability and transparency in the procurement process*
- (b) The establishment of pricing standards and benchmarks*
- (c) Ensuring the application of fair, competitive, transparent, value-for-money standards and practices for the procurement and disposal of public assets and services, and*
- (d) The attainment of transparency, competitiveness, cost effectiveness and professionalism in the public sector procurement system.*¹⁵⁵

To achieve these objectives, the Bureau, working under the guidance of the National Council on Public Procurement established by the Act¹⁵⁶ performs a wide range of functions. These include supervising the implementation of procurement policies, publishing the details of major contracts in a procurement journal, undertaking procurement research and surveys, performing procurement audits and submitting

¹⁵⁴ As discussed earlier in sections 5.3.1 and 5.3.2 of this chapter, the establishment of a regulatory body for procurement processes is an essential part of the broader reform focus of IFIs like the IMF and World Bank whose governance reforms emphasises the establishment of economic and regulatory environments conducive to economic private sector activities.

¹⁵⁵ Section 4 of the Public Procurement Act 2007.

¹⁵⁶ *ibid* Section 1.

such report to the National Assembly and coordinating relevant training programs to build institutional capacity.¹⁵⁷

The establishment of the BPP by the Public Procurement Act of 2007 provided a comprehensive system for preventing corruption in public procurement, and gave legislative backing to the pre-existing system for public procurement. The introduction of reforms in public procurement was an integral part of the Economic Reform Agenda pursued by the government of Nigeria following the return to democracy in 1999.¹⁵⁸ Corruption in various stages of public procurement was considered a major cause of concern by the government, as estimates indicated that over \$10 billion was being lost annually due to fraudulent practices in the award and execution of public contracts.¹⁵⁹ The range of activities sought to be prevented or improved on included poor budgeting processes, lack of competition, inflation of contract cost, lack of procurement plans and poor project prioritisation. In response to this, the government in 2001 set up the Budget Monitoring and Price Intelligence Unit (BMPIU), which became popularly known as the “Due Process” office.¹⁶⁰

The Due Process office was originally established as a unit within the Presidency, and the then president Olusegun Obasanjo appointed Obiageli Ezekwesili as the pioneer head of the Unit. Ezekwesili is a founding director of Transparency International and was, until her appointment, Director of the Harvard - Nigeria Economic Strategy

¹⁵⁷ *ibid* Section 5.

¹⁵⁸ See World Bank, *Nigeria: Country Procurement Assessment Report (CPAR)* (World Bank, Washington D.C 2000).

¹⁵⁹ Bureau of Public Procurement, ‘Background’ <http://www.bpp.gov.ng/index.php?option=com_content&view=article&id=109&Itemid=739> accessed 19 April 2017.

¹⁶⁰ Ikeopuwapo Omolara Fayomi, ‘Public Procurement and Due Process Policy in Nigeria: Thrust, Prospects and Challenges’ (2013) 1(4) *Peak Journal of Social Sciences and Humanities* 39-45.

Programme where she worked with Professor Jeffrey Sachs at the Centre for International Development at Harvard University. She got a lot of acclaim for her work in reforming the country's public procurement process, and for establishing transparency and accountability in the public sector. She is also credited with being the principal architect of the 2007 Public Procurement Act which established the BPP that replaced the BMPIU.¹⁶¹

The overall impact of the BPP and its predecessor the BMPIU in preventing corruption by introducing transparency in public procurement processes in Nigeria has been largely positive. Prior to their establishment, mechanisms to ensure transparency in procurement procedures was almost non-existent, allowing for widespread bribery and other corrupt activities.¹⁶² By October 2004, the Unit claimed to have saved Nigeria over 140 billion Naira through reduced contract costs, and that amounts of up to 11 billion Naira were saved from singular contract transactions.¹⁶³

The unit has been able to block inherent loopholes in the various stages of awarding public-sector contracts and ensured a certain level of sanity in procurement processes. This has been done by enforcing the guidelines and procedures provided for in the Public Procurement Act. For instance, the Bureau is charged with ensuring that all public entities involved in procurement advertise and solicit for bids in a transparent manner and in accordance with guidelines issued from time to time. To further ensure

¹⁶¹ The Public Procurement Act 2007 was enacted in response to a growing public demand to institutionalise the reforms introduced under the BMPIU and to further provide legal backing for the reforms. The Act was passed by the National Assembly on the 30th of May 2007 and subsequently signed into law by the President on the 4th of June 2007. See <<http://www.bpp.gov.ng/>> accessed 11 January 2016.

¹⁶² G. T. Aduda, 'Budget Monitoring and Price Intelligence Unit (Due Process): A Mechanism for Combating Corruption in Infrastructure Delivery in Nigeria' (Partnering to Combat Corruption Series, WEDC, Loughborough University UK 2007) 29-33.

¹⁶³ *ibid* 33.

accountability, CSOs working in the areas of transparency, accountability and anticorruption are mandatorily required to be part of any procurement process.¹⁶⁴

The Fiscal Responsibility Commission (FRC)

The Fiscal Responsibility Commission (FRC) was established by the Fiscal Responsibility Act, 2007.¹⁶⁵ Its functions include undertaking fiscal and financial studies, their analysis and diagnosis and dissemination of the results to the public. It is also empowered to 'disseminate such standard practices including international good practice that will result in greater efficiency in the allocation and management of public expenditure, revenue allocation, debt control and transparency in fiscal matters'.¹⁶⁶ The Act further empowers the Commission to monitor and enforce its provisions generally. One of these provisions with relevance to anticorruption efforts in terms of ensuring transparency and accountability is the Medium-Term Expenditure Framework (MTEF).¹⁶⁷

The adoption of the MTEF was intended to cure most of the defects inherent in the country's budgetary process, such as poor implementation of budgets, unsustainable spending, poorly conceived projects and weak monitoring, auditing and reporting.¹⁶⁸ The implementation of the MTEF is also expected to result in accountability by ensuring that items inserted in the budget by various ministries and parastatals are

¹⁶⁴ See Section 19 of the Public Procurement Act 2007.

¹⁶⁵ Section 1 of the Act.

¹⁶⁶ Section 3(1) of the Act.

¹⁶⁷ Section 11 of the Act.

¹⁶⁸ Osita Agbu, 'Anti-Corruption Crusade in Nigeria: The Challenge of Delivery' (2004) Transparency International Working Paper, 21.

harmonised in line with priority targets set by the central economic team of the government. This is supposed to check the abuse of discretion by top public officials in terms of what is included in the budget. To this end, the Federal Government is required, in consultation with the States, to prepare for approval of the National Assembly, a MTEF for the next three financial years, not later than four months before the commencement of each financial year.¹⁶⁹ The framework is expected to form the basis for the annual budgets of the country.¹⁷⁰

The implementation of the MTEF can be said to have achieved some of its stated objectives¹⁷¹ in terms of improving macro-economic planning and improving the budgetary process overall. However, its effect in ensuring accountability in the management of public funds has been relatively minimal. The experience of applying the MTEF in the last decade or so in Nigeria has proven that the framework, of itself, cannot be a panacea to the lack of accountability in public budgetary processes. Research indicates that in 2010 for instance, the implementation of the MTEF did not appear to have captured all revenues that accrued or were expected to accrue to the government in the medium-term projections.¹⁷² A significant omission in this regard was the revenue expected from the sale of public corporations as part of the privatisation exercise in the power sector. Similarly, on the expenditure side, there

¹⁶⁹ Section 11 of the Act.

¹⁷⁰ Section 18 of the Act.

¹⁷¹ According to the World Bank, the objectives of the MTEF are: (a) improved macroeconomic balance by developing a consistent and realistic resource framework; (b) improved allocation of resources to strategic priorities between and within sectors; (c) increased commitment to predictability of both policy and funding so that ministries can plan ahead and programmes can be sustained; (d) provision to line agencies of a hard budget constraint and increased autonomy, thereby increasing incentives for efficient and effective use of funds.

See World Bank, *Public Expenditure Handbook* (Washington D.C 1998) 48.

¹⁷² Kanayo Ogujiuba and Omoju Sola, 'Medium Term Expenditure and Fiscal Management in Nigeria: A Review of the (2005-2008) Framework' (2013) 5(5) *Journal of Economics and Behavioural Studies* 291-306.

was no reflection of the funding for six new universities created by the Federal Government in 2010 in the MTEF.¹⁷³

These sorts of lapses have made it difficult for the MTEF to serve as a viable mechanism for promoting accountability. The effectiveness of MTEF is largely dependent on the existence of a range of other factors that are not established in countries like Nigeria.¹⁷⁴ For instance, the existence of a strong sense of accountability amongst public officials for their actions and decisions, especially in the allocation and spending of public resources is imperative for the MTEF to achieve its goals. There is also the significant challenge of implementing a rigorous MTEF. A typical MTEF is comprised of macro-economic policy and projections, a fiscal strategy paper, a revenue and expenditure framework, and a statement of the strategic economic, social and developmental priorities of government.¹⁷⁵ The broad, detailed and technical nature of the document makes it difficult for civil society, the media and individual citizens to use it a basis for holding public officials accountable. This has led to calls for the Federal Government to sensitise Nigerians on the general nature of the document and the meaning and effect of the various stipulations contained in it.¹⁷⁶

¹⁷³ *ibid.* It is worth noting that the failure of the executive branch to provide detailed MTEFs and execute them properly has continued to hamper budgetary process in the country. This was particularly a problem that caused much acrimony between the executive and the legislature which delayed the passage of both the 2016 and 2017 budgets. See Hassan Adebayo, 'In Another Blow, Senate Rejects Buhari's "Empty" Fiscal Proposals' *Premium Times* (Abuja, 3 November 2016) <<http://www.premiumtimesng.com/news/headlines/214472-another-blow-senate-rejects-buharis-empty-fiscal-proposals.html>> accessed 29 April 2017.

¹⁷⁴ Oxford Policy Management, 'Medium Term Expenditure Frameworks - Panacea or Dangerous Distraction' (OPM Review 2000) 2.

¹⁷⁵ *ibid.* See also Section 13 of the Fiscal Responsibility Act.

¹⁷⁶ News Agency of Nigeria, 'Expert Advises FG to Sensitise Nigerians on Medium Term Expenditure Framework' (Abuja, 9 December 2015) <<http://nannewsnigeria.com/expert-advises-fg-sensitise-nigerians-medium-term-expenditure-framework>> accessed 11 February 2016.

Office of the Auditor-General (AG)

The office of the AG is one of the few anticorruption mechanisms established by the Constitution.¹⁷⁷ Section 85 of the 1999 Constitution provides for the office of the AG of the Federation who is empowered to audit the accounts of offices and courts of the Federation and submit such reports to the National Assembly.¹⁷⁸ For the purpose of exercising this function, the AG or any person authorised by him in that behalf can have access to all the books, records, returns and other documents relating to such accounts.¹⁷⁹ The AG is also empowered to carry out periodic checks of all government statutory corporations, authorities and agencies, including all bodies and persons established by the National Assembly. In terms of audit however, the AG is only empowered to provide such corporations, authorities and agencies with a list of qualified auditors from which they can appoint their external auditors.¹⁸⁰ The office of the AG is therefore not authorised to conduct direct audits for such bodies, but can comment on their annual accounts and the auditors' reports thereon.¹⁸¹

This limitation on the powers of the AG regarding government statutory corporations, commissions, authorities and agencies is because of the understanding that such bodies operate within a corporate regulatory framework. This takes auditing functions into consideration in a manner that would not otherwise be applied by ministries and departments of government. The AG is nonetheless empowered to perform oversight over their accounts and auditing processes, including providing them with a list of

¹⁷⁷ Detailed provisions regulating audit in the public sector can be found in the Audit Act of 1956. Other laws that regulate the carrying out of audit in the country include the Finance (Control and Management) Act of 1958, the Fiscal Responsibility Act of 2007 and the Public Procurement Act of 2007.

¹⁷⁸ Section 85 (1-2) of the 1999 Constitution.

¹⁷⁹ *ibid.*

¹⁸⁰ Section 85(3) of the 1999 Constitution.

¹⁸¹ *ibid.*

qualified external auditors from which to appoint their external auditors and issuing guidelines on the level of fees to be paid to such external auditors.¹⁸² This power reflects the wide-ranging role of the office of the AG in ensuring accountability in the public sector.

To ensure the independence of the AG, his appointment and removal, whilst made by the president, is subject to confirmation by Senate. A two-thirds majority in the Senate is required in the case of removal of the AG, which can only be for reasons of incapacity or misconduct.¹⁸³ Specifically, Section 85 (6) of the Constitution provides that the AG shall not be subject to the direction or control of any authority or person in the exercise of his constitutional functions.

The above functions of the office of the AG and the constitutional guarantee of its independence means that the office can serve as a key organ to check misappropriation and other forms of corruption both at the federal and state levels.¹⁸⁴ This is especially so considering the AG is required to submit his audit reports to the National Assembly within ninety days of receipt of the Accountant-General's financial statement, for consideration by the Public Accounts Committees of each House of the National Assembly.¹⁸⁵ The Committees are expected to consider the report with a view to ensuring that monies appropriated in the budget of each financial year were spent for approved purposes and with due regard to effectiveness, efficiency and accountability. In doing this, the Committees can, amongst other things, require the

¹⁸² Under Section 85(3)(b) The AG can also comment on the annual accounts of such bodies and the auditor's reports on such accounts.

¹⁸³ Section 87 of the 1999 Constitution.

¹⁸⁴ Sections 125 -127 of the 1999 Constitution makes corresponding provisions for the office of the AG at the State level.

¹⁸⁵ Section 85 (5) of the 1999 Constitution.

attendance of any person or production of any papers or records to clarify issues raised in the audit and to report to the Senate and House of Representatives from time to time.¹⁸⁶

Regrettably, this constitutional mechanism through which the legislature can exercise oversight on the executive and the judiciary in accordance with the doctrine of checks and balances is not used sufficiently in checking corruption. This is for reasons that are not very different from the general problems that have frustrated other anticorruption institutions.¹⁸⁷

5.5 Impact of Anticorruption Regime Under the New Developmentalism

We have considered thus far, the regime for anticorruption in Nigeria under the new developmentalism. This section will examine the impact of this new regime in addressing corruption in Nigeria. There is no doubt that since the rise of anticorruptionism at the global level, there have been significant changes in the regime for anticorruption in the country. These include the passing of laws dealing specifically with corruption,¹⁸⁸ establishment of specialised anticorruption institutions to enforce those laws,¹⁸⁹ the reform of fiscal policies in the public sector and the creation of institutions and initiatives that promote transparency and accountability in

¹⁸⁶ Order XIII, Rule 97 (5) of the Senate Standing Orders 2007 (as amended) and Order XVII, Rule A 6 (1) of the House Standing Orders.

¹⁸⁷ These issues are discussed below.

¹⁸⁸ Such as the EFCC Act and the ICPC Act.

¹⁸⁹ The EFCC and ICPC fall under this category.

governance.¹⁹⁰ Efforts to tackle corruption are now more extensive, intense and intricate. The discussion that follows looks at the impact of these third-moment changes on anticorruption endeavours: Have these changes translated into better results in tackling corruption? Has the current regime improved on pre-existing efforts to tackle corruption by remedying the problems that hampered those efforts?

To examine these questions, the performance of the current regime will be discussed in the light of the factors that bedevilled previous anticorruption efforts. In section 3.3.3 of chapter three, efforts to deal with corruption in Nigeria during the first and second moments of law and development were discussed. The discussion highlighted some factors which were responsible for the ineffectiveness of previous anticorruption efforts. In summary, the following factors were identified:

- The efforts were often ad hoc and short term, varying according to each government in office
- They were top-down state-led initiatives formulated and implemented from the uppermost levels of the executive leadership in the country.
- Anticorruption efforts were often subject to political interference and used to achieve political goals.¹⁹¹

In considering the current regime in relation to these factors, particular cases of corruption, institutional reforms and anticorruption initiatives that have taken place in the period in question since the return to democracy in 1999 will be examined. The

¹⁹⁰ Institutions and initiatives established for these purposes include the Bureau of Public Procurement and accompanying reform of procurement processes in the public sector, the Fiscal Responsibility Commission and the Medium-Term Expenditure Framework.

¹⁹¹ Detailed discussion of these factors is found in section 3.3.3 of Chapter 3.

discussion spans the four different administrations that the country has since witnessed under Olusegun Obasanjo, Umaru Yar'Adu, Goodluck Jonathan and the incumbent government of Muhammadu Buhari.¹⁹²

5.5.1 Ad Hoc and Short-Term Nature

Previous efforts to address corruption in Nigeria during the first and second moments of law and development were usually ad hoc and short term. Each government established its specific plans and strategies that fitted its peculiar objectives. Hence, such efforts rarely survived beyond the term of government that constituted them. This deprived anticorruption efforts of the sustainability needed for a long-term impact.

This is however, one area where much has changed under the new developmentalism. The establishment of institutions and initiatives backed by law means that there is now continuity in anticorruption efforts. Agencies like the EFCC and ICPC have been permanent features of the anticorruption regime for over fifteen years now, surviving all four administrations since the return to democracy. Other institutions like the BPP and FRC have also been part of the regime since their establishment in 2007. Hence, the fiscal policies and broader governance reforms that these institutions were

¹⁹² Olusegun Obasanjo was elected president of Nigeria following the return to democracy in 1999. He served two four-year terms before leaving office in 2007. His successor Umaru Yar'Adua died in office in 2010 having served three out of his four-year term. He was succeeded by his vice-president Goodluck Jonathan who completed the term of his boss before being elected as substantive president in 2011. His tenure ended in 2015 and after an unsuccessful re-election bid, Goodluck Jonathan was succeeded by Muhammadu Buhari.

Most of the substantive reforms of the current anticorruption regime were established by the government of Olusegun Obasanjo between 1999 and 2007. There have however, been a few initiatives initiated by the other administrations. These will become obvious in the discussion that follows in the rest of this section.

established to oversee have also endured. The same applies to the components of the regime established by the constitution like the CCB, CCT and the office of the AG.

A few factors can be identified to explain the difference between the current regime and previous efforts in this regard. The first is the fact that the country is presently enjoying its longest democratic dispensation since independence.¹⁹³ This has enhanced the chances of reforms enduring from one administration to another due to the prevalence of the rule of law and separation of powers. Any changes to basic facets of the anticorruption regime would need to go through the due process of law requiring both legislative, executive and potentially judicial input. The erstwhile situation where leaders under military regimes could easily abolish pre-existing initiatives and replace them arbitrarily by simply making decrees to that effect has been eliminated.

Another factor responsible for the sustainability of the current regime is the influence of external actors like IDIs and global and regional organisations. This is a direct result of the rise of anticorruptionism which has meant that there is increased international scrutiny of anticorruption efforts. Changes can no longer be done easily without reasonable justification and accountability. Moreover, the initiation and sustenance of most reforms - particularly those related to governance and fiscal policies - are now important conditions for the country to access loans and aid from most IDIs in the light

¹⁹³ Since independence in 1960, Nigeria had only been under democratic rule for six years (from 1960 to 1966) and another four years (from 1979 to 1983) before the commencement of the current 18-year democratic dispensation (from 1999 to date).

of the prevalence of governance conditionality.¹⁹⁴ This provides added motivation to ensure continuity.

Furthermore, commentary and advocacy by international CSOs like Transparency International and Human Rights Watch on developments in the country's anticorruption regime adds to the pressure against making radical changes.¹⁹⁵ The impact of such international pressure is made more impactful considering the apparent consensus on the substance of reforms that meet international governance and anticorruption standards. Any changes that appear contrary to such standards are likely to bring about increased external pressure. In any case, with the issue of governance now a central element, not just for IDIs, but also for private investors, it is also in the interest of the country economically to maintain and project an image of stability in its efforts to tackle corruption.

Whilst the stability of anticorruption efforts under the current regime is a positive development, the effect of this in terms of remedying the problems of previous efforts to address corruption will become clearer in the examination of the other factors that defined those efforts.

¹⁹⁴ Heather Marquette, *Corruption, Politics and Development: The Role of the Bank* (Palsgrave Macmillan 2003) 39-73; International Monetary Fund (n 65).

¹⁹⁵ Examples of such comments include Human Rights Watch, 'Nigeria: Firing of Anti-Corruption Czar Won't Fix Agency' (23 November 2011) <<https://www.hrw.org/news/2011/11/23/nigeria-firing-anti-corruption-czar-wont-fix-agency>>; Transparency International, 'Transparency International Calls on Nigerian Government to Step Up its Fight Against Corruption and Welcomes an Investigation into the Oil Sector' (17 February 2014) <https://www.transparency.org/news/pressrelease/transparency_international_calls_on_the_nigerian_government_to_step_up_its> accessed 29 April 2017.

5.5.2 Top-Down State-Led Structure

A major problem with previous anticorruption efforts was their top-down structure. Both under civilian and military regimes, efforts to tackle corruption were often state-led with policies and programmes formulated and implemented from the topmost levels of executive leadership. This exposed them easily to changes in government and made them amenable to political influences.

Not much has changed in this respect under the current anticorruption regime. As discussed above, there has been an obvious expansion of anticorruption efforts, especially as they reflect the broad and extensive attributes of the global anticorruption agenda. In contrast to previous efforts where anticorruption efforts concentrated on dealing with corruption as a crime, or in some cases a moral wrong, current efforts now deal with corruption from various perspectives. In addition to dealing with corruption as a crime - as dictated by most international instruments on corruption - corruption is also now tackled with reference to its impact on social and especially economic development. This has led to good governance and fiscal and economic reform programmes championed by the World Bank and other IDIs aimed at tackling corruption.

This expansion has however not radically altered the structural emphasis of the regime. Efforts to tackle corruption are still mostly driven from the top and through the mechanism of the state. The dismal failures of such state-led top-down initiatives to tackle corruption in the past has apparently not informed any change of strategy in this regard. Unsurprisingly, the results have been no different under the current regime, with manifest inefficiencies in various facets of the regime.

5.5.2.1 *Inefficiencies of General Structure*

The first and most obvious demonstration of this is the inefficient way anticorruption institutions have been established and run. The institutional framework for addressing corruption is made up of multiple agencies with often overlapping jurisdictions. Naturally, this results in an absurd and inefficient duplication of functions. Where a public official engages in bribery for instance, any of the following institutions has legal authority under the current framework to act: the EFCC,¹⁹⁶ ICPC,¹⁹⁷ CCB,¹⁹⁸ and the Nigeria Police Force.¹⁹⁹

This is in addition to other supporting institutions that might be involved in the processes of investigation, prosecution and enforcement. These include the office of the Attorney General and the Department of State Services. The impact of this duplication is manifold. Firstly, it makes it difficult to ascertain a single integrated approach in dealing with particular cases of corruption as each institution acts independently in accordance with its enabling legislation. The duplication of functions also means that no specific institution is held responsible for the overall failures of the institutional framework for dealing with corruption.

A final point worth making is the exorbitant cost of running these institutions. Scarce state resources are applied to funding these multiple anticorruption institutions that

¹⁹⁶ Sections 6 and 18, EFCC Act.

¹⁹⁷ Section 8, ICPC Act.

¹⁹⁸ Par. 6, Part 1 of the Fifth Schedule to the 1999 Constitution.

¹⁹⁹ Section 98 of the Criminal Code Act and Section 115 of the Penal Code Act.

perform similar and in some cases, the same functions. Hence, even where the overall allocation made for anticorruption efforts is reasonable, the funds become negligible once broken down to show what goes to each institution. For instance, even though a total sum of 31.1 billion Naira is allotted for anticorruption efforts in 2017, a breakdown shows that institutions like the ICPC got only 5.93 billion Naira with just 1.49 billion Naira going to the BPP and 2.73 billion Naira to the CCB.²⁰⁰ These institutions are likely to engage in the usual complaint of inadequate funding to excuse any failures on their part at the end of the year. It would be very different if the lump sum was given to a single anticorruption institution with better chances of performing the functions of these institutions effectively in a more coordinated and efficient manner.

The ineffectiveness of state-led efforts is further exemplified by the unsuccessful efforts to deal with this problem of multiplicity of anticorruption institutions. Even though the Act establishing the EFCC empowers it to coordinate and enforce ‘all economic and financial crime laws and enforcement functions conferred on any other person or authority’,²⁰¹ the Commission has failed in performing the role of acting as a central point for the convergence of all anticorruption efforts. Repeated initiatives to ensure coordination of the activities of all anticorruption institutions under the auspices of the EFCC²⁰² have thus far not borne any concrete results.

²⁰⁰ Basil Obasi, ‘FG Fights Graft with N31bn in 2017’ *The Sun* (Abuja, 30 December 2016) <<http://sunnewsonline.com/fg-fights-graft-with-n31bn-in-2017/>> accessed 9 January 2017.

The EFCC, as expected, received 17.2 billion Naira representing 55 per cent of the total sum allocated.

²⁰¹ Section 6(c), EFCC Act.

²⁰² For one of such instances, see Chuka Odittah, ‘EFCC, ICPC, CCB Plan Joint Operations’ *Leadership* (Abuja, 19 September 2012) <<http://allafrica.com/stories/201209190236.html>> accessed 10 January 2017. It is worth noting that in 2009, the Inter-Agency Task Team (IATT) was established as a working group of anticorruption agencies in Nigeria. Its member organisations include the EFCC, ICPC, Technical Unit on Governance and Anti-Corruption Reforms (TUGAR), CCB, CCT, Nigeria Police Force, BPP National Drug Law Enforcement Agency (NDLEA) and the Federal Ministry

Despite the obvious need to reform the law on this issue, broader efforts by successive governments to do so have all failed. The immediate past leadership of Goodluck Jonathan rejected a recommendation to merge the EFCC, ICPC and CCB to make them more effective.²⁰³ The recommendation was made by a special committee set up by the government to review Nigeria's ministries, departments and parastatals with a view to making governance more efficient. Despite the Committee's statement of the obvious rationale and benefits of such merger, the government in its white paper on the report of the Committee, rejected the recommendation without giving any reasons for its decision.²⁰⁴

Furthermore, on assumption of office in 2015, the current administration of Muhammadu Buhari promised to merge anticorruption institutions in the country.²⁰⁵ Despite widespread public support for the initiative,²⁰⁶ the government is yet to keep its promise. Instead it has embarked on creating new anticorruption institutions, whilst current ones continue to falter. Shortly after resuming office, the government

of Justice. Despite its many years, of existence, there is no strategic integration of anticorruption efforts through its work. Instead its efforts have been limited to issues like joint staff training and sharing of opinions and ideas, with each institution's core operations taking place independently and performing often duplicated functions. See ICPC, 'Inter-Agency Task Team Reviews Progress Report' (11 June 2015) <<http://icpc.gov.ng/inter-agency-task-team-reviews-progress-report/>> accessed 2 August 2017.

²⁰³ Premium Times, 'Breaking: Orasanye Report: Federal Government Rejects Merger of EFCC, ICPC; to Merge Aviation Agencies' (Abuja, 7 April 2014) <<http://www.premiumtimesng.com/news/158291-breaking-orasanye-report-nigerian-government-rejects-merger-efcc-icpc-merge-aviation-agencies.html>> accessed 10 January 2017.

²⁰⁴ Federal Republic of Nigeria, 'White Paper on the Report of the Presidential Committee on Restructuring and Rationalisation of Federal Government Parastatals, Commissions and Agencies' (Federal Government Printer, Lagos, March 2014) 12.

²⁰⁵ Soni Daniel, 'Buahri to Merge EFCC, ICPC; 42 Ministries Reduced to 19' *Vanguard* (Lagos, 21 June 2015) <<http://www.vanguardngr.com/2015/06/buhari-to-merge-efcc-icpc-42-ministries-reduced-to-19/>> accessed 10 January 2017.

²⁰⁶ Editorial, 'Nigerians Okay Planned Merger of MDAs, EFCC, ICPC, Others' *The Guardian* (Lagos, 25 August 2015) <<http://guardian.ng/news/nigerians-okay-planned-merger-of-mdas-efcc-icpc-others/>> accessed 10 January 2017.

established a Presidential Advisory Committee on Anti-Corruption which has become the leading body for setting anticorruption policy.²⁰⁷ The Committee, with a very vague mandate, has simply taken on the role of defending the anticorruption efforts of the government without adding any significant value to the regime.

Regrettably, its first two policy decisions appear ill-considered with the potential to perpetuate existing structural problems. The first was advising against the merger of the EFCC and ICPC or other anticorruption institutions, without giving any concrete reason for that position.²⁰⁸ The other was to seek the establishment of Special Courts to try corruption cases.²⁰⁹ The Committee noted that this was necessary to 'aid speedy dispensation of justice in high profile corruption cases in the country'.²¹⁰ It is difficult to rationalise the establishment of a different judicial mechanism for corruption cases when there is a more expedient need for reforms in the overall regime. This is a step that appears designed to do nothing more than score political points for the current administration. There is no guarantee that these courts will be any more effective or insulated from the inefficiency of the judiciary and public sector in Nigeria. Moreover, the effort and resources to be committed to establishing special courts for corruption cases would prove strategically more beneficial if used to improve the country's overall court system. The positive impact of such alternative course of action would extend beyond just anticorruption efforts to the overall state of the rule of law and democratic

²⁰⁷ BBC News, 'Nigeria President Appoints Anti-Corruption Advisers' (London, 11 August 2015) <<http://www.bbc.co.uk/news/world-africa-33857545>> accessed 10 January 2017.

²⁰⁸ Akinola Ajibade, 'Merger of EFCC, ICPC, Others not Foreseeable' *The Nation* (Lagos, 15 February 2016) <<http://thenationonlineng.net/merger-of-efcc-icpc-others-not-foreseeable/>> accessed 10 January 2017. The Chairman of the Presidential Advisory Committee on Anti-Corruption, Prof Itse Sagay, whilst expressing this position, simply stated that even though discussions are ongoing on the issue, it is not likely that the organisations would merge.

²⁰⁹ Premium Times, 'Special Courts Coming for Corruption, Kidnapping, Others - Sagay' (Abuja, 24 June 2016) <<http://www.premiumtimesng.com/news/headlines/205873-special-courts-coming-corruption-kidnapping-others-sagay.html>> accessed 10 January 2017.

²¹⁰ *ibid.*

governance. Also, in the face of resource restraints faced by the CCT for instance, which presides over corruption cases, establishing extra courts that would likely face similar challenges raises questions about the wisdom behind such an initiative.

5.5.2.2 *Inefficiency of Particular Institutions*

The structural problems of the current anticorruption regime extend also to the activities of specific institutions. The actions of anticorruption institutions with respect to certain cases evinces this inefficiency. The case of Peter Odili who was governor of Rivers State, a sub-region in the south of the country for two four-year terms from 1999 to 2007, provides a good example.²¹¹ Towards the end of his tenure, the EFCC disclosed how it had investigated financial misappropriations by the governor²¹² and intended to charge him in court the moment he left office and lost his constitutional immunity.²¹³ Apprehensive of this, the Attorney-General of the State applied to court and secured an injunction barring the EFCC from investigating the finances of the State or arresting the governor on the basis any purported investigation. The

²¹¹ Rivers State is located in the oil-rich Niger Delta region of Nigeria. The State witnessed unprecedented income levels during the tenure of Peter Odili but did not enjoy commensurate development due largely to mismanagement of resources and corruption. A 2007 report by Human Rights Watch showed that much of the corruption was perpetrated by the Governor's office, where millions of dollars were allocated for questionable purposes like 'grants, contributions and donations', (\$33.2m in 2016 alone) unspecified 'special projects' (\$77m in 2016) and a 'security vote' of about \$38.5m, just to mention a few.

See Human Rights Watch, "Chop Fine": The Human Rights Impact of Local Government Corruption and Mismanagement in Rivers State, Nigeria' (Vol 19, No. 2(A), 2007) <<https://www.hrw.org/report/2007/01/31/chop-fine/human-rights-impact-local-government-corruption-and-mismanagement-rivers>> accessed 20 February 2017.

²¹² Sahara Reporters, 'N100 Billion Looting of Rivers State: The EFCC Interim Report' (New York, 28 December 2016) <<http://saharareporters.com/2006/12/28/n100-billion-looting-rivers-state-efcc-interim-report>> accessed 14 December 2015.

²¹³ Section 308 of the Constitution of the country grants immunity from legal proceedings to the President and Vice- President and Governors and Deputy-Governors of the various states of the federation, whilst they are in office. The implication of this is that no anticorruption institution can prosecute anyone holding those positions until they have left office and thereby lost their constitutional immunity.

application was made on the ground that such investigation was ‘prejudicial to the smooth running of the Government of Rivers State’.²¹⁴ The EFCC filed a notice of appeal against this decision but did nothing more. A couple months after the governor left office, he personally applied for and was granted ‘a perpetual injunction restraining the EFCC from arresting, detaining and arraigning Odili based on his tenure as governor relying on the purported investigation.’²¹⁵ The EFCC failed to take any steps in terms of appealing this second injunction until the legal limit for appeals under the rules of court expired. Reports indicate that top officials of the Commission were unable to explain the reason for this failure or indeed why the trial of Odili has failed to commence until date, despite an obvious case of corruption against him and repeated calls for him to be prosecuted.²¹⁶

The ICPC has also proven to be inefficient in carrying out its functions as a primary anticorruption institution. Even though it was the first anticorruption institution established after the return to democracy in 2000, it continues to play second fiddle to the EFCC in tackling public-sector corruption. This is the case even though it is granted wider powers in certain respects than the EFCC. For instance, unlike the EFCC, it can require public officials to explain how they are in possession of properties that can be deemed excessive having regard to their past and present salaries and all other relevant circumstances.²¹⁷ Furthermore, the chairman and members of the ICPC are accorded a more secure tenure by law than the leadership of the EFCC.

²¹⁴ Attorney-General for Rivers State vs. The Economic and Financial Crimes Commission & 3 Others (FHC/PHC/CS/78/2007).

²¹⁵ Dr. Peter Odili vs. The Attorney General of the Federation & The Economic and Financial Crimes Commission (FHC/PHC/1291/2007).

²¹⁶ Human Rights Watch (n 134) 42-43.

²¹⁷ See Sections 44-8 of the ICPC Act. The powers of the EFCC in this regard are more limited in comparison. See Sections 7, 25-6 of the EFCC Act.

The former can only be removed by the president acting on an address supported by two-thirds majority of the Senate.²¹⁸ In the case of the EFCC, the president can remove them from office without the need for confirmation by the Senate or any other authority.²¹⁹

Ordinarily, these factors should empower the ICPC to be more proactive in its anticorruption efforts. However, this has not been the case.²²⁰ The inefficiency and ineffectiveness of the ICPC is a perception also shared by the public as shown by a 2008 public poll.²²¹ 81 percent of Nigerians polled named the EFCC as the first anti-corruption agency that came to mind when asked about anticorruption agencies in Nigeria, compared to 16 percent that named the ICPC.

The inefficiency of state-led anticorruption efforts can also be seen from the operations of complementary anticorruption institutions. The BBP for instance, despite its revolutionary impact in engendering transparency and accountability has been criticised for being inefficient. Most complaints about the Bureau relate to delays in its 'due process' certification process. Government ministries and private contractors alike, have had to wait for unduly long periods of time to get through all the requisite processes before contracts are awarded.²²² Furthermore, the dissemination of

²¹⁸ Section 3(8) of the ICPC Act. This may be done on the grounds of inability to discharge the functions of their office (whether arising from infirmity of mind or body or any other cause) or for misconduct.

²¹⁹ See Section 3(2) of the EFCC Act. A member of the Commission may be removed at any time by the President for inability to discharge the functions of his office (whether arising from infirmity of mind or body or any other cause) or for misconduct or if the President is satisfied that it is not in the interest of the Commission or the interest of the public that the member should continue in office.

²²⁰ Human Rights Watch, 'Chop Fine' (n 211) 95.

²²¹ See Convention on Business Integrity, 'Report of the Public Perceptions of the Anti-Corruption Agencies' (2010) 28, cited in Human Rights Watch (n 134) 47.

²²² O.J Ameh and O. Ogundare, 'Impact of Due Process on Construction Projects in Nigeria' (2013) 4 (1) *Journal of Building Performance* 13-23; Tobi Soniyi, 'Due Process Delays Release of N350bn Capital Vote' *This Day* (Lagos, 9 June 2016)

information about procurement processes has been done quite poorly by the Bureau.²²³ Even though substantive aspects of the processes are provided for in the Public Procurement Act, their complicated and extensive nature requires strategic communication by the Bureau to ensure effective compliance. This is a responsibility it has failed to discharge effectively, thereby hampering the impact of the overall public procurement reforms.

There are two important points worth making about the inefficiency of state-led efforts in tackling corruption. Firstly, even though the discussion here is about anticorruption institutions and initiatives, the problems identified illustrate the broader problem of inefficiency in the public sector in Nigeria. Various studies have pointed to the cumbersome, inefficient and unproductive nature of the public service.²²⁴ As with the case of the anticorruption regime, efforts to reform the public service to make it more efficient have also borne few results.²²⁵ It is therefore illogical to expect that efforts to tackle corruption through state institutions operating within the generally inefficient public service in Nigeria will be efficient.²²⁶

<<http://www.thisdaylive.com/index.php/2016/06/09/due-process-delays-release-of-n350bn-capital-vote/>> accessed 6 January 2017.

²²³ Tunde Oyasanya, 'The Challenges of Due Process Procedure' *Leadership* (Abuja, 1 January 2009) <<http://allafrica.com/stories/200901020450.html>> accessed 6 January 2016.

²²⁴ Abiodun Akinwale, *Public Administration and Personnel Management in Nigeria* (Spectrum Books Ltd 2007); Ladipo Adamolekun, John Erero and Basil Oshionebo, "'Federal Character" and Management of the Federal Civil Service and the Military' (1991) 21(4) *Publius* 75-88; Vitalis Onyekachi Nweze, 'Assessing the Effects of State Economic Empowerment and Development Strategy (NEEDS) in the Development of Public Service in Enugu State: A Case Study of Ministries of Education and Finance (1999-2007)' (MSc Dissertation, University of Nigeria 2010).

²²⁵ Alex Sekwat, 'Civil Service Reform in Post-Independence Nigeria: Issues and Challenges' (2002) *Public Administration Quarterly* 498-517; Adewale Banjo, 'Public Sector Reforms in Nigeria: 1999-2009' in Shikha Vyas-Doorgapersad, Lukamba-Muhiya and Ernest Peprah Ababio (eds) *Public Administration in Africa: Performance and Challenges* (Routledge 2013) 83-96.

²²⁶ This point has been made in more detail in: Matthew Ayibakuro, 'The Futility in Fighting Corruption in an Inefficient Public Sector: The Nigerian Case' (*The Africa Development Dialogue*, 27 September 2016) <<https://theafricadevelopmentdialogue.com/2016/09/27/the-futility-of-fighting-corruption-in-an-inefficient-public-sector-the-nigerian-case/>> accessed 20 February 2017.

The second important point is that the problems discussed above are sometimes symptomatic of political influence in anticorruption efforts. The nature and impact of this is discussed next.

5.5.3 Political Interference and Instrumentalism

A significant factor that defined actions and initiatives dealing with corruption in Nigeria during the first and second moments of law and development was their use for political purposes.²²⁷ This is a trend that continues under the current post-1999 regime. In fact, the rise of anticorruptionism has arguably provided more impetus for the ‘instrumentalisation’ of anticorruption efforts for political purposes. Due to the heightened global attention and pressure for action to be taken at the local level, certain unfair and oppressive actions by government are now easily justified through the use of anticorruption rhetoric. IDIs and other international actors often emphasise the importance of political will to tackling corruption.²²⁸ Ironically however, the exercise of such will has often led to less desirable outcomes.

There are a myriad cases where, instead of being applied to genuinely deal with corruption, political will has rather been exercised, to ‘defuse opposition, bolster

²²⁷ Ejovi Austine, Mgbonyebi Voke Charles and Akpokighe Okemute Raymond, ‘Corruption in Nigeria: A Historical Perspective’ (2013) 3(16) *Research on Humanities and Social Science* 19-26.

²²⁸ World Bank, *Helping Countries Combat Corruption* (n 52) 5; Roberto Martinez B. Kukutschka, *Building Political Will: Topic Guide* (Transparency International 2015) 1; OECD, ‘Reinforcing Political Will to Fight Corruption in Eastern Europe and Central Asia’ (Report of High-Level Meeting of OECD Anti-Corruption Network for Eastern Europe and Central Asia, 2012) 6-9; Rick Messick, ‘The Political Will to Fight Corruption: Lessons From Nigeria’ (GAB, 31 December 2014) <<https://globalanticorruptionblog.com/2014/12/31/the-political-will-to-fight-corruption-lessons-from-nigeria/>> accessed 21 February 2017.

support or placate external agencies.²²⁹ The assessment of the performance of anticorruption institutions show a classic case of politicians using such institutions to ‘publicise allegations and evidence of corruption in an effort to demonstrate opponents’ and former administrations’ hypocrisies and their own virtue.²³⁰ In extreme cases, anticorruption institutions are used to get rid of political opponents and particular anticorruption campaigns designed as ‘tactical responses to political challenges, rather than sincere attempts to reform.’²³¹

To examine the nature of political interference under the current regime, a number of cases involving the EFCC as a primary anticorruption institution will be examined. Thereafter, the influence of politics on the activities of complementary anticorruption institutions will be discussed.

5.5.3.1 *Political Interference and Instrumentalism and the Economic and Financial Crimes Commission*

This use of anticorruption institutions for political purposes became a hallmark of the activities of the EFCC under the presidency of Olusegun Obasanjo²³² and continued under succeeding governments. The agency earned plaudits from Nigerians and the international community in the first few years of its operation as the statistics examined

²²⁹ Sahr Kpundeh and Phyllis Dininio, ‘Political Will’ in Rick Stapenhurt, Niall Johnston and Riccardo Pellizo (eds), *The Role of Parliament in Curbing Corruption* (World Bank 2006) 41-42.

²³⁰ *ibid.*

²³¹ *ibid.* See also Sahr J. Kpundeh, ‘Political Will in Fighting Corruption’ in UNDP, *Corruption and Integrity Improvement Initiatives in Developing Countries* (United Nations, New York 1998) 91.

²³² Olusegun Obasanjo was elected president at the return of the country to democratic rule in 1999 and ruled for two successive terms of four years each. He left office in 2007 after a failed bid to amend the constitution for a third term. See Encyclopaedia Britannica, ‘Olusegun Obasanjo’ (25 October 2013) <<https://www.britannica.com/biography/Olusegun-Obasanjo>> accessed 6 January 2017.

above show. However, the reputation of the agency was called into question when instances of political interference in its activities started surfacing.

The conviction in 2005 of the country's former Inspector General of Police on charges of corruption was arguably the highlight of the anticorruption efforts of the EFCC.²³³ But any expectation that this would bolster the anticorruption regime and lead to further high-profile prosecutions and convictions started filtering away in the months leading up to the 2007 general elections. Obasanjo freely used the EFCC to harass and eliminate from the political process those opposed to his agenda, whilst simultaneously protecting his allies from prosecution. This was done with a view to ensuring the victory of the ruling Peoples Democratic Party at the polls and more particularly installing his chosen successors.

One of the first indications of this occurred in February 2007 when the EFCC published a list of 135 aspirants for different positions in the elections across the country, whom the agency considered corrupt and therefore unfit to stand for election.²³⁴ This 'advisory' list was dominated by opposition politicians and members of the ruling party who were opposed to the president. The most prominent of these was the vice president, Atiku Abubakar who had famously spearheaded the opposition to Obasanjo's unsuccessful bid to secure an unconstitutional third term in office.²³⁵ The federal government set up an 'Administrative Panel' to investigate, and after sitting for

²³³ BBC News, 'Nigerian Ex-Police Chief Jailed' (London, 22 November 2005) <<http://news.bbc.co.uk/1/hi/world/africa/4460740.stm>> accessed 6 January 2016.

²³⁴ Abdul Jimoh, 'EFCC Release Lists of Candidates Adjudged Corrupt and Unfit for Elections' *Sahara Reporters* (New York, 16 March 2007) <<http://preview.saharareporters.com/2008/07/09/efcc-release-lists-candidates-adjudged-corrupt-and-unfit-elections>> accessed 28 November 2015.

²³⁵ BBC News Online, 'Nigerian VP Named on Graft List' (London, 7 February 2007) <<http://news.bbc.co.uk/1/hi/world/africa/6338017.stm>> accessed 28 November 2015.

only 48 hours, the panel indicted a good number of those on the list.²³⁶ This was done without giving them any real opportunity to appear and defend themselves before the panel.²³⁷ It was unsurprising that Atiku Abubakar was one of those indicted. Relying on the indictment, the Independent National Electoral Commission (INEC), citing constitutional provisions,²³⁸ excluded those indicted from the elections, despite widespread criticism of the decision.²³⁹ It was only after he challenged his exclusion in court and the Supreme Court ruled in his favour just five days before the presidential polls that the name of the vice-president was included in the ballot.²⁴⁰

Notably, the EFCC 'advisory' list omitted the names of several top-ranking members of the ruling party who were widely considered corrupt and whose corrupt activities had previously been denounced by the EFCC Chairman.²⁴¹ These included the vice-presidential candidate for the ruling party Goodluck Jonathan who had been practically handpicked by Obasanjo. Others were the governorship candidate for the ruling party in Oyo State, Christopher Alao-Akala and his counterpart in Ogun State, Olugbenga Daniel.²⁴² Various reports condemned the obvious use of the EFCC by the ruling party and the presidency in particular, during the events preceding the 2007 elections.²⁴³

²³⁶ The Panel reviewed a total of 77 cases and recommended that 37 of those named on the list be disqualified from running for office at the polls. 36 names were recommended for further investigation, with four names cleared. See This Day, 'White Paper Reverses Panel Report, Disqualifies 37' (Lagos, 18 February 2007).

²³⁷ Human Rights Watch, *Election or 'Selection': Human Rights Abuse and Threats to Free and Fair Elections in Nigeria* (Human Rights Watch, April 2007) 32.

²³⁸ Section 137(1)(i) of the 1999 Constitution disqualifies from running for the office of President, anyone who has been indicted for embezzlement or fraud by a Judicial Commission of Inquiry or an Administrative Panel of Inquiry. Similar provisions are made in the constitution for other elective offices both at the federal and state levels. See sections 66(1)(h), 107(1)(h) and 182(1)(1).

²³⁹ Human Rights Watch *Election or 'Selection'* (n 237) 32.

²⁴⁰ Bachir Adigun, 'Nigerian Candidate Wins Court Ruling' *The Washington Post* (Washington D.C., 16 April 2007) <<http://www.washingtonpost.com/wp-dyn/content/article/2007/04/16/AR2007041600296.html>> accessed 21 February 2017.

²⁴¹ Human Rights Watch *Corruption on Trial?* (n 134) 11.

²⁴² *ibid.*

²⁴³ National Democratic Institute, 'Final NDI Report on Nigeria's 2007 Elections' (April 2008) 23-4 <https://www.ndi.org/files/2313_ng_report_election07_043008.pdf> accessed 30 November 2015;

This was a typical case where an anticorruption institution was used by the president to simultaneously protect his allies and harass and intimidate his opponents.

This episode tainted the legitimacy of the EFCC and eroded public trust in the ability of the agency to successfully deal with corruption. It also overshadowed previous successes recorded by the Commission and the promise shown in the activities of its early days. This culminated in the removal of the head of the EFCC, Nuhu Ribadu within a year of the 2007 elections by the government of Umaru Yar'Adua that succeeded Obasanjo.²⁴⁴ His removal was also precipitated by another case of political interference. This case involved the Attorney-General of the Federation at the time, Mr. Michael Aondoakaa who accused Mr. Ribadu and the EFCC of human rights violations and disregard for due process and rule of law in its prosecutions of former governors of the ruling party.²⁴⁵ On these grounds, the Attorney-General of the Federation sought to intervene and take over the said trials in exercise of his constitutional powers. Mr. Ribadu's resistance to this led to his removal and replacement.²⁴⁶

DfiD, 'Elections in Nigeria in 2007' (2008)

<https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/67655/elections-ng-2007.pdf> accessed 21 February 2017.

²⁴⁴ Craig Timberg, 'Nigerian Corruption Official Faces Removal' *The Washington Post* (Washington D.C, 4 January 2008) <<http://www.washingtonpost.com/wp-dyn/content/article/2008/01/03/AR2008010301017.html>> accessed 28 November 2015.

²⁴⁵ Femi Falana, 'Anti-Graft Agencies and AG' *This Day* (Lagos, 21 August 2007) 14.

²⁴⁶ Ribadu was not only removed from office as Chairman of the EFCC, he was demoted by two ranks in the Nigeria Police Force from which he was appointed to lead the EFCC. He was subsequently dismissed from the Force after he challenged his demotion in court. He later left the country and only returned after the death of President Yar'adua. The latter's successor in office, Goodluck Jonathan pressured the Police Service Commission to reverse its decision to sack Ribadu and restored his rightful rank.

See The Economist, 'Corruption in Nigeria: A Prodigal Policeman Returns' (London, 8 July 2010) <<http://www.economist.com/node/16545111>> accessed 21 February 2017.

Further proof of the politicisation of the anticorruption regime in Nigeria was found under the presidency of Umaru Yar'Adua. Following the removal of Nuhu Ribadu, Mrs Farida Waziri was appointed to head the EFCC. In July 2009, it published a list of 56 prominent Nigerians who were collectively accused of embezzling over 243 billion Naira from the nation's treasury. Those on the list included former governors, ministers, permanent secretaries, heads of state parastatals, legislators and chairmen of local governments. The document stated the amounts embezzled by each individual as ranging from 10 million to 100 billion Naira.²⁴⁷ All 56 individuals listed were subsequently charged in court in separate cases.

A significant issue with this list was that, much like the one released by Ribadu prior to the 2007 elections, it also omitted the names of certain high profile corrupt politicians, some of whom were under investigation by the EFCC under the previous administration.²⁴⁸ The most apparent of these was the past governor of Delta State, James Ibori who was accused of embezzling funds to the tune of over 10 billion Naira during his tenure as governor from 1999 to 2007. The EFCC under Ribadu had made concerted efforts to prosecute Ibori but could not charge him because of the constitutional immunity he was entitled to whilst in office.²⁴⁹ It was therefore rather interesting that, not only was Ibori's name missing from the list released by Waziri, but

²⁴⁷ Nigerian Tribune, 'Bode George, Kalu, Ladoja, Dariye, 52 Others looted 243bn - EFCC' *Nigerian Tribune* (Ibadan, 10 July 2009) 14.

²⁴⁸ Sahara Reporters, 'Of Looters, Leaders and the EFCC List' *Sahara Reporters* (New York, 10 July 2009) <<http://saharareporters.com/2009/07/10/looters-leaders-and-efcc-list>> accessed 6 January 2017.

²⁴⁹ Section 308 of the Constitution protects individuals holding the office of president or vice president, and governor or deputy governor from civil or criminal proceedings during the individual's tenure in office.

Ibory proceeded to secure various legal victories in cases previously instituted against him by the EFCC.²⁵⁰

In this case, a further proof of the amenability of the EFCC to the whims of executive leadership appeared when Ibory was immediately declared wanted by the EFCC when the next president of Nigeria Goodluck Jonathan took office following the death of Umaru Yar'Adua. Ibory was eventually tried and convicted in London for embezzling about 50 million pounds of public funds.²⁵¹

5.5.3.2 Political Interference and Instrumentalism and Complementary Anticorruption Institutions

Cases involving three institutions will be examined here: The CCB, BPP and office of the AG.

The Code of Conduct Bureau

The ongoing prosecution of the current senate president of Nigeria, Bukola Saraki, provides an obvious example of the influence of political considerations on the activities of the Bureau. After failing to prosecute any notable public official at the federal level since the return to democracy, on 11 September 2015 the Bureau filed a

²⁵⁰ BBC News, 'Nigeria Dismisses James Ibory Money Laundering Charges' (London, 17 December 2009) <<http://news.bbc.co.uk/1/hi/world/africa/8418302.stm>> accessed 6 January 2017.

²⁵¹ Mark Tran, 'Former Nigeria State Governor James Ibory Receives 13-Year Sentence' *The Guardian* (London, 17 April 2012) <<https://www.theguardian.com/global-development/2012/apr/17/nigeria-governor-james-ibory-sentenced>> accessed 6 January 2017.

13-count charge of corruption against Saraki.²⁵² The offences contained in the charge range from false declaration of assets to operating a foreign bank account and acquiring assets beyond his legitimate means.²⁵³ The offences were alleged to have been committed whilst Saraki was governor of Kwara State in western Nigeria from 2003 to 2011.

Ordinarily, the trial of the third highest-ranking political office holder on charges of corruption would be a welcome development for the anticorruption efforts. It should have also won plaudits for the presidency of Muhammadu Buhari who was elected on the promise of 'fighting corruption', having come so soon after the elections. However, the circumstances of the trial have led to the allegations that the trial is an act of political persecution more than anything else. The reason for this was that on 9th June 2015, Bukola Saraki had emerged as Senate President against the inclination of the leadership of the ruling party, the All Progressive Congress (APC) on whose platform Saraki was elected. The obvious choice of the party for the position was Ahmad Lawan, who was also publicly understood to be the preferred candidate of the presidency. However, in a rather dramatic process that saw Saraki getting the backing of senators of the opposition Peoples Democratic Party (PDP), Saraki was chosen as president of the senate, causing much embarrassment to the leadership of his party and the presidency.²⁵⁴

²⁵² Federal Republic of Nigeria vs. Dr. Olubukola Abubakar Saraki (CCT/ABJ/01/2015). See Nicholas Ibekwe, 'Conduct Bureau Clams 13-Count Corruption Charge on Senate President, Bukola Saraki' *Premium Times* (Abuja, 16 September 2015) <<http://www.premiumtimesng.com/news/top-news/190161-conduct-bureau-slams-13-count-corruption-charge-on-senate-president-bukola-saraki.html>> accessed 5 January 2016.

²⁵³ These were in violation of the code of conduct for public officers contained in Part 1 of the Fifth Schedule to the Constitution.

²⁵⁴ The Sun, 'How Saraki Emerged Senate President' (Lagos, 10 June 2015) <<http://sunnewsonline.com/new/how-saraki-emerged-senate-president/>> accessed 5 January 2016.

The process of Saraki's prosecution by the CCB commenced less than three months after his emergence as Senate President, leading to the conclusion by certain groups that his emergence and subsequent prosecution are not unconnected.²⁵⁵ The details of the charges against him and the way the trial has proceeded make it difficult to dismiss this conclusion. Firstly, most of the charges against him relate to statements in his assets declaration as governor of Kwara State many years ago. In fact, some of them date back to his assets declaration in 2003 when he was first elected as governor. It is difficult to reconcile the failure of the CCB to detect the alleged false declaration for over 12 years, with its doing so a couple of weeks after his problems with the presidency. This is more concerning considering he lost his constitutional immunity from prosecution since 2011 when he ceased being governor.

Surely the intention of the draftsman of the Code is that the veracity of assets declared by public officers should be checked at the time they take office against their assets as at when they leave office, to ensure that their possessions are justified by their income whilst in office. Yet, the CCB failed to discover or act on the alleged falsehoods in Saraki's assets declarations, even though he made four different declarations in his two terms as governor and a further three in his time in the Senate.²⁵⁶ The fact that the allegations were brought against him only after his dramatic emergence as Senate President created a cloud over the work of the Bureau that cannot easily be dismissed.

²⁵⁵ The Guardian, 'Kwara Group Seeks Buhari's Intervention in Trial of Saraki' (Lagos, 22 September 2015) <<http://www.nguardiannews.com/2015/09/kwara-group-seeks-buharis-intervention-in-trial-of-saraki/>> accessed 5 January 2016.

²⁵⁶ Paragraph 11 of Part 1 of the Fifth Schedule to the Constitution requires public officers to declare their assets immediately after taking office, at the end of every four years after that and also at the end of their term of office.

The implication of this is that Saraki made four declarations in relation to his time as governor (2003-2011), two more in his first term in the Senate (2011-2015) and one more at the beginning of his current term as Senate President.

Furthermore, the manner the trial by the CCT has proceeded also creates questions regarding its independence. The lead judge of the tribunal on 5 November 2015 ruled that the trial of the Senate President must proceed even though there was a pending appeal in the Supreme Court against the continuation of the trial.²⁵⁷ It seems that there is a sudden urgency on the part of the CCB and CCT to try and convict Saraki for charges that could have been brought a long time ago. And both bodies appear prepared to defy even decisions of the Supreme Court in pursuance of this trial. This sets a discouraging precedent not only in terms of the politically tainted nature of the trial, but also within the bigger picture of the independence of anticorruption institutions and respect for the rule of law.²⁵⁸

It is instructive that on 14 June 2017, The CCT dismissed all the charges against the senate president on the ground that the prosecution had failed to prove any of the allegations.²⁵⁹ This decision vindicated the claims of Saraki and many others – as argued in this section – that the prosecution was politically motivated from the onset.

²⁵⁷ Dr. Olubukola Abubakar Saraki vs. Federal Republic of Nigeria (2016) LPELR-400013(SC). See The Herald, 'CCT Trial: Between Advocates of Justice and Judicial Exploiters' (Lagos, 7 November 2015) <<http://www.theheraldng.com/cct-trial-between-advocates-of-justice-and-judicial-exploiters/>> accessed 5 January 2016.

²⁵⁸ It is worth noting that, following the decision of the Supreme Court in February 2016 rejecting the appeal of the senate president on the preliminary issue, the trial was duly referred back to the CCT for continuation. See Evelyn Okakwu, 'Updated: Supreme Court Says Senate President, Bukola Saraki, Must Face Corruption Trial' *Premium Times* (Abuja, 5 February 2016) <<http://www.premiumtimesng.com/news/headlines/198003-breaking-supreme-court-rejects-sarakis-appeal-orders-face-corruption-trial.html>> accessed 29 April 2017.

²⁵⁹ Evelyn Okaku, 'False Asset Declaration Charge: Saraki Discharged, Acquitted' *Premium Times* (Abuja, 14 June 2017) <<http://www.premiumtimesng.com/news/top-news/234057-breaking-false-asset-declaration-charge-saraki-discharged-acquitted.html>> accessed 5 August 2017.

The Office of the Auditor-General

Despite the constitution guaranteeing the independence of the office of the AG, political interests continue to hamper the effectiveness of the office in checking corruption. This is because the effectiveness of the office is dependent on the will of the National Assembly to act on its audit reports.²⁶⁰ And the lack of action on the part of the National Assembly has been significant and detrimental. In 2011, the AG of the Federation under the presidency of Goodluck Jonathan referred to this when he accused the National Assembly of encouraging corruption by failing to act on over 14 audit reports submitted to it since 1999.²⁶¹ He noted that the National Assembly had failed to question government departments and ministries that had been found to have mismanaged public funds as disclosed in the reports. Furthermore, it had also failed to act on others who failed to submit their accounts for audit over the years.²⁶²

Even in cases where massive misappropriations disclosed in audit reports were confirmed by the National Assembly after carrying out investigations, usually in the form of public hearings, individuals and authorities were rarely held accountable.²⁶³

²⁶⁰ See Sections 85-89 of the Constitution. As noted earlier in the consideration of the institutional framework in Nigeria, the provisions apply *mutatis mutandis* at level of States in the country.

²⁶¹ ThisDayLive, 'National Assembly is Encouraging Corruption, Says Auditor-General' (Lagos, 17 October 2011) <<http://www.thisdaylive.com/articles/national-assembly-is-encouraging-corruption-says-auditor-general/100699/>> accessed 20 January 2016.

²⁶² *ibid.* Some of the departments and agencies indicted for not submitting audit reports in accordance with constitutional provisions included the Central Bank of Nigeria, the Nigeria National Petroleum Corporation and the Economic and Financial Crimes Commission.

²⁶³ A recent case in this regard concerned an audit report submitted by the AG to the National Assembly which showed that over 183 billion Naira had been misappropriated in a federal agency, the Niger Delta Development Commission between 2008 and 2012. After an exchange of claims and counter-claims between officials of the agency, the AG and the National Assembly, the matter has slowly disappeared from public purview without any individual or authority being held accountable for the revelations.

See OAuGF, 'Report on Special Periodic Checks on the Activities and Programmes of Niger Delta Development Commission (NDDC) for the Period 2008-2012' (Abuja 14 August 2015); Bassey Udo, 'NDDC Diverted N183bn Niger Delta Development Money, Auditor General Insists' *Premium Times* (Abuja, 19 August 2015) <<http://www.premiumtimesng.com/news/headlines/188697-nddc-diverted-n183bn-niger-delta-development-money-auditor-general-insists.html>> accessed 24 January 2017.

This is therefore one way in which political interests - in this case apathy and lack of commitment to an anticorruption mechanism - impacts on the effectiveness of the office of the AG in performing its role in checking corruption.

However, a more extreme case of political interference with the office of the AG took place in 2003 under the presidency of Olusegun Obasanjo. The AG at the time Vincent Azie submitted an audit report to the National Assembly for the very first time since 1999. The report showed misappropriation of funds by most government ministries and departments, including the Presidency, National Assembly and the Judiciary. This caused considerable embarrassment to the government and its acclaimed commitment to tackle corruption. Shortly after the submission of the report, the Federal Government, through its Minister of Information, Professor Jerry Gana, openly criticised the report and the AG was subsequently removed from office.²⁶⁴ The official justification put forward by the government for its decision was that the AG was only in office in acting capacity and that his tenure as acting AG had expired. However, it was rather ironic that the replacement chosen by the government was Joseph Ajiboye who had previously served as acting AG and failed to produce any audit report as constitutionally required of his office and whose nomination by the President in 2002 as substantive AG had been rejected by the Senate.²⁶⁵ At the time of his re-nomination as substantive AG to replace Azie in 2003, a new Senate had just been elected and his appointment was confirmed this time around.²⁶⁶

²⁶⁴ Editorial, 'Using Auditor-General's Report to Fight Corruption' *The Authority* (Abuja, 18 December 2015) <<http://authorityngr.com/2015/12/Using-Auditor-General-s-report-to-fight-corruption/>> accessed 24 January 2017.

²⁶⁵ Nature Umar and Iyefu Adoba, 'Senate Rejects Auditor-General Nominee' *This Day* (Lagos, 25 January 2002) <<http://allafrica.com/stories/200201250147.html>> accessed 14 January 2016.

²⁶⁶ Henry Omunu, 'Nigeria: Senate Confirms Ajiboye as Auditor-General' *Daily Trust* (Abuja, 30 July 2003) <<http://allafrica.com/stories/200307300187.html>> accessed 14 January 2016.

Even though the earlier rejection of the nomination of Ajiboye was based on the grounds that his appointment would violate the principle of federal character in appointments enshrined in the

The removal of Azie seriously tainted the supposed commitment of the government at the time to tackle corruption and further exemplified the lack of independence from political influence of anticorruption institutions in Nigeria.

The Bureau of Public Procurement

As discussed above, the BPP suffered from many efficiency problems especially during its early years of operation. This notwithstanding, it was largely celebrated for its revolutionary reforms in the public sector in Nigeria. However, for all the good work of the Bureau and its pioneer director Obiageli Ezekwisi, questions have been raised about how the Bureau under her command failed to detect a lot of the corrupt scandals that hit the country during her term in office. This is especially so for cases that went through contractual processes that were overseen by the Bureau.²⁶⁷ These include estimates of over 16 billion dollars spent by the federal government under Obasanjo on the electricity sector with no tangible results.²⁶⁸ Another was the award of 214

constitution because at that time, the Accountant-General of the Federation and the Governor of the Central Bank (the principal offices in the public finance sector) were all from the South-West region of the country, the fact that he had failed to perform the duties constitutionally required of his office whilst holding the office of the AG in an acting capacity should have discouraged his renomination and subsequent appointment.

²⁶⁷ Al Jazeera, 'Head to Head - Nigeria's Future: Failed State or African Superpower' (2 May 2015) <<https://www.youtube.com/watch?v=YAY04VWpWfE>> accessed 11 January 2016.

In an interview with Mehdi Hassan of Al Jazeera, Ezekwisi was unable to provide a direct answer to the question of whether or not the government of Obasanjo who appointed her head of the BMPIU was corrupt or not. This is despite the fact that the government of Obasanjo was generally considered corrupt and his time as leader of Nigeria witnessed a lot of corruption scandals, some of which are discussed in this work.

²⁶⁸ The National Assembly has recently decided to probe most of the contracts awarded in the power sector under the government of Obasanjo and his successors. See Henry Omoru, 'Power: Obasanjo, Yar'Adua Jonathan Spent N2.74trn in 16 Years' *Vanguard* (Lagos, 9 September 2015) <<http://www.vanguardngr.com/2015/09/power-obasanjo-yaradua-jonathan-spent-n2-74trn-in-16-years/>> accessed 11 January 2016.

million dollars for the creation of National Identity Cards to SAGEM S.A by the Ministry of Internal Affairs, which was later discovered to have been procured through a corruption scam involving top public officers including two federal ministers.²⁶⁹ Significantly, in the latter case, the contract was awarded to SAGEM, a French company, even though the Nigerian Security Printing and Minting Company which had the capacity to execute the contract bid for the contract at a lower rate.²⁷⁰

The cases examined in this section are only examples of the continuing interference of politicians and political interests in anticorruption efforts in Nigeria. Amongst other things, this is made possible by a system of executive tyranny that has been a constant feature of the political milieu since independence.²⁷¹ It creates patronage systems favourable to the executive throughout the polity.²⁷² The operation of anticorruption institutions is no exception. The impact of this on the overall anticorruption regime is manifold. It thwarts its effectiveness by curtailing the ability of institutions to act independently in their efforts to control corruption. In the long term, this undermines the credibility of anticorruption institutions and their moral authority to address corruption. It further erodes public support for such institutions which is essential to their success.²⁷³

²⁶⁹ Cockcroft Laurence, *Global Corruption: Money, Power and Ethics in the Modern World* (I.B. Tauris 2012) 145-9.

²⁷⁰ Oghogho Obayuwana, 'ID Card Award to French Firm Worries Party' *The Guardian* (Lagos, 26 July 2001) <<http://allafrica.com/stories/200107260484.html>> accessed 6 January 2017.

²⁷¹ Ayokunle Olumuyiwa Omobowale, 'Disorder and Democratic Development: The Political Instrumentalisation of Patronage and Violence in Nigeria' (2011) 5(6) *African Journal of Political Science and International Relations* 283-286; Richard A. Joseph, 'Class, State and Prebendal Politics in Nigeria' (1983) 21 *Journal of Commonwealth & Comparative Politics* 21-38.

²⁷² Rotimi T. Suberu, 'Prebendal Politics and Federal Governance in Nigeria' in Wale Adebawale and Ebenezer Obadare (eds.) *Democracy and Prebendalism in Nigeria: Critical Interpretations* (Palgrave Macmillan 2013) 79-101.

²⁷³ World Bank *Helping Countries Combat Corruption* (n 52) 44. Other broader impacts of political interference in anticorruption efforts include the injustice caused to persons who are unduly harassed by anticorruption institutions and the negative effect on social capital, the rule of law and the human rights regime in the country. As a result of this, popular support for anticorruption measures, even when justified, can be reduced by claims that they are essentially being used for political objectives.

5.6 Conclusion

This chapter has examined the approach to corruption in the third moment of law and development - the era of the new developmentalism. It has established that, unlike the previous two moments of law and development, this era witnessed a change in attitude towards corruption. As a result of a more comprehensive approach to development and broadening of the role of law in the development process, addressing corruption became a central concern in international development efforts. From the 1990s onwards IDIs led by the World Bank introduced a wide range of policies and programmes aimed at addressing corruption in countries in the global South.

In SSA, the implementation of these reform policies - necessitated by their sudden importance to donor organisations, foreign investors and the international community in general²⁷⁴ - radically changed the pre-existing legal and institutional frameworks for dealing with corruption. This is perfectly illustrated by the case study of Nigeria where there has been an unprecedented expansion of the country's anticorruption regime. Anticorruption efforts are no longer ad hoc and short term as was the case previously. A significant impact of the reforms introduced by the rise of anticorruptionism is that corruption is now dealt with in a more robust and intricate manner through a broad range of laws, institutions and initiatives.

²⁷⁴ Heather Marquette, 'Corruption Eruption: Development and the International Community' (1999) 20(6) Third World Quarterly 1215-1220.

However, these reforms have had little impact in addressing the fundamental problems of previous efforts to tackle corruption. The current anticorruption regime still deals with the problems of dealing with corruption through a top-down state-led framework. Furthermore, anticorruption efforts are still subject to political interference and are consistently co-opted by successive leaders to pursue political goals. The impact of the rise of anticorruptionism on the anticorruption regime in Nigeria has largely been about form rather than substance. And the result of this is the failure of the current regime to effectively tackle corruption, despite the implementation of a considerably broader anticorruption agenda.

In the light of this, the important question worth asking is why the global reform agenda to address has had little practical impact in terms of improving the pre-existing anticorruption regime? How come the problems faced by local efforts to tackle corruption persisted despite the broad reform policies and programmes that were pursued by IDIs in Nigeria - and arguably other countries in SSA - in the aftermath of the rise of anticorruptionism? It is to these questions bordering on the supply-side factors behind the failures of the anticorruption efforts in the region that this thesis now turns.

Chapter Six: EXPLANATIONS FOR THE APPROACH TO CORRUPTION IN THE THIRD MOMENT OF LAW AND DEVELOPMENT

6.0 Introduction

This chapter considers why the approach to corruption in the third moment of law and development had little impact in terms of practically improving anticorruption efforts at country level. It looks at the underlying reasons why the problems faced by local efforts to address corruption persisted despite the broad reforms introduced by the heightened attention to corruption during this period. The chapter argues that the explanations for this has to do broadly with two related issues.

The first relates to the evolution of the agenda of good governance and anticorruptionism. The discussion below shows that the agenda was conceived and implemented in furtherance of a particular development ideology without taking into consideration the realities of addressing corruption in countries in SSA. Secondly and corollary to the above, the chapter argues that the reforms failed to have the desired impact because they are based on long-standing problems and ill-considered assumptions of law and development programmes.

6.1 Origin of Good Governance and Anticorruptionism

There have been brief references to the origin of the current global anticorruption agenda at various points in this work.¹ Such references have been made to the extent that they demonstrate the relationship between the historical development of the agenda and the various issues discussed at each point. What follows is however a relatively more comprehensive examination of this history to the extent that it explains the inherent drawbacks of the approach to corruption in the third moment of law and development.

As noted earlier, the history of anticorruptionism can be traced back to the governance reforms of the World Bank that commenced around the end of the 1980s and beginning of the 1990s.² Until then, the World Bank had clearly abstained from engaging with the subject of corruption. This was attributed to the fact that corruption was considered a political issue and therefore outside the economics-focused mandate of the Bank.³ However, a major event in the development history of countries in the global South, especially in SSA in the 1980s changed all this. At the beginning of the decade, the Iranian Revolution of 1979 and the Iran-Iraq war that followed a year later led to a global oil crisis.⁴ This resulted in high levels of inflation in major

¹ Earlier references to this history can be found in the discussion of the conception of corruption (section 2.1), conception of development during the second moment of law and development (section 3.2.1), and the approach to corruption in the third moment of law and development (section 5.3).

² Howard Stein, *Beyond the World Bank Agenda: An Institutional Approach to Development* (The University of Chicago Press 2008) 38-51.

³ See Article IV, Section 10 of the Articles of Agreement of the World which provides that 'The Bank and its officers shall not interfere in the political affairs of any member: nor shall they be influenced in their decisions by the political character of the member or members concerned. Only economic considerations shall be relevant to their decisions, and these considerations shall be weighed impartially in order to achieve the purposes stated in Article I [which deals with the purposes of the Bank]'

⁴ Overseas Development Institute, *Africa's Economic Crisis* (ODI Briefing Paper No 2, September 1982) 4-5.

economies around the world. The United States and other western countries reacted to this by tightening monetary policy mainly through the increase of interest rates. At the time, most countries in SSA buoyed by a commodity boom in the 1970s had borrowed heavily from commercial lenders in these major economies to finance development projects.⁵ These loans were mainly dollar-denominated and based on floating interest rates. Hence, the inevitable result of the increase of those rates was that countries in the region were no longer able to keep up with their ever-increasing debt repayment obligations.⁶

From 1981 to 1983 a good number of countries in the global South had defaulted on their debt obligations. In sub-Saharan Africa alone, about eleven countries defaulted during this period.⁷ There was an urgent need to find a solution to prevent the crisis from spreading further and worsening the state of the global economy. To this end, the World Bank and the IMF stepped in to restructure the debt of the defaulting countries by lending them money to repay their debt.⁸ This was made conditional on the countries adjusting their economies in accordance with neoliberal policies that entailed trade liberalisation, privatisation, deregulation and reduction of price rigidities, amongst others. These were collectively referred to as Structural Adjustment Programmes (SAP). The expectation was that the implementation of these policies would bring about stability in the short term and economic growth down the line.

⁵ Richard N. Cooper and Robert Z. Lawrence, 'The 1972-75 Commodity Boom' (1975) 3 Brookings Papers on Economic Activity 671-723.

⁶ William Easterly, 'The Lost Decades: Developing Countries' Stagnation in Spite of Policy Reform 1980-1998' (2001) 6(2) Journal of Economic Growth 135-157.

⁷ These were Zambia, Angola, Cameroon, Tanzania, Nigeria, Niger, Mozambique, Gambia, Congo, Ivory Coast and Gabon. See Frederico Sturzenegger and Jeromin Zettelmeyer, *Debt Defaults and Lessons from a Decade of Crises* (MIT Press 2007) 3-30.

⁸ Devesh Kapur, John P. Lewis and Richard Webb (eds), *The World Bank: Its First Half Century* (The Brookings Institution 1997) 683.

However, as the decade came to an end, it was clear that these expectations were far from being met and the situation in most countries was worse off than it had been before the adoption of the SAPs.⁹ In essence, the neoliberal policies had failed in bringing about expected economic growth and this occasioned pressure on the relevant IDIs to provide an explanation. This was worsened by the fact that the failure of the programmes in countries in SSA could not be explained by existing economic theories at the time.¹⁰ In addition, organisations like the UNICEF and UNDP strongly criticised the neoliberal orthodoxy for the heavy suffering exacted on the most vulnerable people in countries in the global South, because of the implementation of the conditionality clauses of SAPs.¹¹

In response, the World Bank commissioned a study to consider the reasons for the dismal performance of its neoliberal agenda.¹² The study situated the failure of the SAPs, not on the inadequacies of the programmes themselves, but rather on the lack of institutional capacity on the part of states in the region to manage the process of

⁹ Dambisa Moyo, *Dead Aid: Why Aid is not Working and How There is Another Way for Africa* (Penguin Books 2009) 22.

As a matter of fact, the statistics show that between 1980 and 1990 investment declined at an annual rate of 3.9 percent compared to a growth of 4.0 percent between 1973 and 1980. Real per capita income fell by 1.2 percent annually after having grown by 0.6 percent from 1973-1980. Also, exports fell by 0.6 percent per annum and per capita food production fell by 6 percent. All this was taking place at a time when the region was accumulating enormous additional debt burden. It is estimated that from 1980 to 1988, debt increased at an annual compound rate of 12 percent and the debt-to-exports ratio rose at a rate of 17.7 percent per annum to an astronomical 360 percent of gross domestic product. Debt relative to gross national product was at 98.3 percent in 1989, up from 27.4 percent in 1980.

See Howard Stein and E. W. Nafziger, 'Structural Adjustment, Human Needs and the World Bank Agenda' (1991) 29(1) *Journal of Modern African Studies* 173-189; Finn Tarp, *Stabilisation and Structural Adjustment: Macroeconomic Frameworks for Analysing the Crisis in Sub-Saharan Africa* (Routledge 1993).

¹⁰ Gerald J. Schmitz, 'Democratisation and Demystification: Deconstructing "Governance" as Development Paradigm' in David B. Moore and Gerald J. Schmitz (eds), *Debating Development Discourse: Institutional and Popular Perspectives* (Macmillan Press 1995) 54-90.

¹¹ Morag Goodwin and Kate Rose-Sender, 'Linking Corruption and Human Rights: An Unwelcome Addition to the Development Discourse' in Martin Boersma and Hans Nelen (eds) *Corruption and Human Rights: Interdisciplinary Perspectives* (Intersentia 2010) 222.

¹² World Bank, *Sub-Saharan Africa: From Crisis to Sustainable Growth - A Long-Term Perspective Study* (Washington, D.C 1989)

adjustment.¹³ It was therefore recommended that the Bank direct its policy towards building and strengthening state institutions - improving governance - that would be capable of providing the needed support for neoliberal adjustment development policies to thrive. This marked the commencement of the Bank's governance agenda.

It is worth noting that the conclusion reached by the Bank contrasted with the views of most critics who blamed the failure of structural adjustment on the inappropriateness of the reforms for countries in the region, the indiscriminate imposition of similar market-based conditions on different countries and the inherent unfairness of market reforms.¹⁴ This notwithstanding, the governance reforms that followed were informed by the conclusion of the failure of public institutions. This had the effect of absolving the Bank and the IMF, and their policies of blame. It also provided further justification for the continuation of neoliberal policies in the region, albeit in a broadened form.

The focus on governance reforms was also facilitated by coincidental developments in global politics at the time. The end of the cold war played a major role in this respect as Western governments and institutions no longer had motivation to support

¹³ *ibid.*

Howard Stein provides an interesting background to this study of the Bank. He recounts that Bank had initially commissioned Ramgopal Agarwala to be the principal writer of the study. With the aid of a \$1 million fund from Scandinavian countries, Agarwala had travelled to around 15 countries in SSA and spoken to 300 - 400 Africans. His findings were highly critical of structural adjustment. Upon presenting the first draft of the report, the head of the Africa Office in the Bank at the time, Edward Jaycox was extremely dissatisfied with the report and thus brought in Perre Landell-Mills to 'tone down the criticisms of structural adjustment' and provide other explanations for the poor performance of African economies in the 1980s. The final copy of the report as prepared by Landell-Mills therefore reached the conclusion that reforms needed to go beyond structural adjustment to address fundamental questions like human capacities, institutions and governance, amongst others.

See Stein, *Beyond the World Bank Agenda* (n 2) 39-40.

¹⁴ Schmitz, 'Democratisation and Demystification' (n 10) 54-90; Kapur, Lewis and Webb (n 8); Howard Stein, 'Crises and the Bretton Woods Institutions and the Crises of the Bretton Woods Institutions' (Shadow GN Conference, Columbia University, February 2009); Paul Mosley, Turan Subasat and John Weeks, 'Accessing Adjustment in Africa' (1995) 23(9) *World Development* 1459-1473; Bade Onimode, Lawrence O. C. Agubuzu and Adebayo Adedeji, *African Development and Governance Strategies in the 21st Century: Looking Back to Move Forward* (Zed Books 2004).

governments in SSA for strategic diplomatic reasons without regard for their governance record.¹⁵ Public opinion in most Western states also became less supportive of aid generally, and more so for aid given for unaccountable or indefensible reasons.¹⁶ There was an obvious move towards providing support only to 'worthy' governments and the good governance agenda fitted this purpose perfectly.

The ensuing governance agenda was mainly dedicated to building and strengthening state institutions that were necessary to support the functioning of market policies. Emphasis was on issues like budgetary and financial management, the legal framework for development, efficiency of revenue mobilisation and public expenditure, and transparency and accountability in public administration.¹⁷ Tackling corruption directly was therefore not an immediate focus. It was only dealt with to the extent that it was considered symptomatic of weak and inefficient public institutions and processes. This was the case until the mid 1990s.

6.1.1 The Direct Focus on Anticorruption within the Governance Agenda

A couple of factors can be identified as being responsible for the rise of anticorruptionism to a central place within the governance agenda. Firstly, the General Counsel of the World Bank Ibrahim Shihata, in evaluating the mandate of the Bank in the light of the newly-introduced governance agenda provided a legal foundation for

¹⁵ Mark Gallagher, *Rent-Seeking and Economic Growth in Africa* (Westview Press Inc 1991) ix.

¹⁶ Goodwin and Rose-Sender (n 11) 225.

¹⁷ These were set out in a special report commissioned to consider the relationship between governance and economic development released in 1992. See World Bank, *Governance and Development* (World Bank, Washington, D.C 1992).

the Bank to directly engage in anticorruption.¹⁸ In interpreting the mandate which prohibits the Bank from interfering in the political affairs of member states and allows it only to make decisions based on economic considerations,¹⁹ Mr. Shihata provided a construction of the Bank's governance agenda as economic rather than political.²⁰ He opined that, to the extent that reforming institutions and dealing with impediments to good governance like corruption were essential to efficiency in the economy, they were within the mandate of the Bank.²¹ This interpretation which contrasted with the previous strict understanding of the mandate of the Bank vis-a-vis corruption, was pivotal in enabling the Bank's direct involvement in anticorruption efforts.

The second factor had to do with the change in approach brought about by the leadership of James Wolfensohn who served as the ninth president of the World Bank from 1995 to 2005. Shortly after assuming office, he made 'deal[ing] with the cancer of corruption' a strategic objective that was necessary for the Bank to achieve its core purpose of fighting global poverty.²² Hence, just a couple of years after the commencement of his presidency, the Bank released its first policy document on

¹⁸ Ibrahim Shihata served as General Counsel and Senior Vice-President of the World Bank from 1983-1998. In this role, he was pivotal in evaluating the legal ramifications of the Bank's work in a range of areas including its lending function, rule of law programme, governance agenda and anticorruption. For a consideration of the influence of his role at the Bank on development, see Robert C. Effros, 'The World Bank in a Changing World: The Role of Legal Construction' (2001) 35(4) *The International Lawyer* 1341-1348.

¹⁹ See Article III, Section 4(vii) and Article IV, Section 10 of the Articles of Agreement of the World Bank. Similar provisions are found in Article V, Section 1(g), Section 6 and Article VI, Section 5(c) of the Articles of Agreement of the International Development Association.

²⁰ Ibrahim Shihata, 'Issues of "Governance" in Borrowing Members: The Extent of Their Relevance Under the Bank's Articles of Agreement, Legal Memorandum of the General Counsel' (21 December 1990).

²¹ *ibid.* See also Ibrahim F. I. Shihata, 'Corruption: A General Review with an Emphasis on the Role of the World Bank' (1997) 5(1) *Journal of Financial Crime* 12-29.

²² World Bank, *Voice for the World's Poor: Selected Speeches and Writings of the World Bank President James D. Wolfensohn, 1995-2005* (World Bank 2005) 45.

For more about the legacy of the leadership of Wolfensohn, see World Bank, 'History: James David Wolfensohn' <<http://www.worldbank.org/en/about/archives/history/past-presidents/james-david-wolfensohn>> accessed 13 February 2017.

anticorruption.²³ As discussed in section 5.3 of the previous chapter, this approach at the Bank provided impetus for other global actors like the IMF, the UN and international civil society to take serious steps to address corruption.

It is therefore instructive that, whilst recognising the impetus provided by Wolfensohn, anticorruptionism is - to the extent that it is an integral part of the Bank's governance agenda²⁴ - deeply rooted in the neoliberal foundations of the World Bank. The fact that it was not part of mainstream development efforts until the late 1990s, despite the obvious effects of corruption on development efforts in countries in SSA, makes it important to evaluate the foundations and motivations behind the change in approach. A consideration of the problems of current efforts to tackle corruption which does not look at this history is unlikely to arrive at a comprehensive conclusion.

As the discussion above shows, anticorruption reforms were not introduced as a straightforward response to the state of corruption in countries in the region. If this had been the case, they would have been introduced decades before. The reforms were also not founded on the results of robust empirical studies of the economic failures and general development challenges of individual countries in SSA in the 1980s. Furthermore, the Bank's claim that anticorruption reforms were introduced in

²³ World Bank, *Helping Countries Combat Corruption: The Role of the World Bank* (PREM, September 1997).

It is worth noting that apart from James Wolfensohn who provided the impetus from the top, other individuals within the Bank also added pressure for the Bank to address corruption. These include Peter Eigen, who left the Bank in the early 1990s to form Transparency International when he was told that he could not deal with corruption within the Bank, and Petter Langseth who started working on corruption in Uganda without a clear mandate from the Bank to do so.

See Heather Anne Marquette, 'The Origins and Development of the World Bank's Anti-Corruption Programme' (PhD Thesis, Durham University 2002) 186.

²⁴ Ibrahim F. I Shihata, *The World Bank in a Changing World: Selected Essays and Lectures: Volume III* (Brill - Nijhoff 2000) 641.

response to a demand from countries for assistance in dealing with corruption²⁵ is also delusive. Having set the preconditions through its involvement in governance programming - with special regard to the premise of that involvement - the Bank created the necessity for countries to seek its assistance to tackle corruption. This evinces the practice of development institutions who often justify intervention by constructing the right preconditions, usually a set of problems, a state of crisis²⁶ or as in this case, an external demand for such intervention.²⁷ The reality of the evolution of anticorruptionism is that these reforms were introduced at the prerogative of the Bank as a defensive strategy at a time when its neoliberal development paradigm was experiencing a crisis that threatened the ideological foundations and role of the Bank in international development.

6.2 Anticorruptionism and the Problems of Law and Development

A central implication of the above discussion is that anticorruption efforts were introduced in the third moment of law and development in spite of its long-standing problems, and not necessarily as a response to them. The examination of the approach to corruption in the first and second moments of law and development in chapter three noted the plain lack of attention to dealing with the issue. In chapter four, a number of factors providing insights as to why this was the case were

²⁵ World Bank, *Helping Countries Combat Corruption* (n 23) 3.

²⁶ See for instance, the central background paper to the World Bank's governance agenda which is suitably titled, *Sub-Saharan Africa: From Crisis to Sustainable Growth - A Long-Term Perspective Study* (World Bank 1989).

²⁷ Henry Bernstein, 'Agricultural 'Modernisation' and the Era of Structural Adjustment: Observations on Sub-Saharan Africa' (1990) 18 (1) *The Journal of Peasant Studies* 3-35.

examined. These factors - indicative of broader well-established criticisms of the movement - have endured even though anticorruption has become a foremost issue in development.

The persistence of these factors can be understood in the light of the history of the rise of anticorruptionism discussed above. The fact that the governance and the anticorruption agenda did not emerge in international development as a result of a considered response to identified development challenges, meant that the introduction of the agenda did not respond to those problems in terms of proffering solutions to them. Hence, these fundamental problems remain. However, their nature and effect have evolved in the light of the rise of anticorruptionism.

The discussion that follows examines the role of these problems in explaining the lack of impact of anticorruptionism in improving efforts to tackle corruption at the local level as demonstrated by the case of Nigeria. For easy reference, the factors referred to here, which were examined in chapter four are:

- Generic legal transplantation and disregard for local context
- The influence of international financial institutions
- The challenge of data
- Predominance of the economic paradigm of development
- Blind spots of law and development.

6.2.1 A Global Generic Agenda and the Challenge of Local Context

An oft-referenced element of the approach to development under the new developmentalism is the need for local circumstances to be taken into consideration in the formulation and implementation of policies and programmes.²⁸ In response to the criticisms of the transplantation of generic legal institutions during previous moments of law and development, there is growing recognition of the need for 'local ownership' of programmes.²⁹

The manner the current anticorruption agenda is conceptualised and implemented however belies this notion and makes it appear theoretical at best. Ivanov observes that 'although the global agenda aims to be "multi-pronged" and tailored to local circumstances, it still prescribes similar policies from Nigeria to Bulgaria.'³⁰ There is an evident disposition to pursue generic models without discrimination with reference to the contextual differences in countries.³¹ According to William De Maria, 'when western governments commit anticorruption resources to Africa, they commit similar resources to do similar things.'³²

²⁸ Nilima Gulrajani, 'The Art of Fine Balances: The Challenge of Institutionalising the Comprehensive Development Framework Inside the World Bank' in Diane Stone and Christopher Wright (eds), *The World Bank and Governance: A Decade of Reform and Reaction* (Routledge 2006) 48.

²⁹ Richard Cameron Blake, 'The World Bank's Draft Comprehensive Development Framework and the Micro-Paradigm of Law and Development' (2000) 3(1) *Yale Human Rights and Development Journal* 159-189.

³⁰ Palin S. Ivanov, 'The Limits of a Global Campaign Against Corruption' in Sarah Bracking (ed), *Corruption and Development: The Anti-Corruption Campaigns* (Palgrave Macmillan 2007) 28.

³¹ Alan Doig, Robert Williams and David Watt, *Measuring "Success" in Five African Anti-Corruption Commissions* (U4 Report 2005) 36.

³² William De Maria, 'The New War on African "Corruption": Just Another Neo-Colonial Adventure?' (4th International Critical Management Studies Conference, Cambridge, 4-7 July 2005) 7.

The World Bank set the agenda for this when it stated its strategy on how it would help countries 'combat corruption'.³³ This strategy spelt out five key areas - economic policy and management, administrative and civil service reform, financial controls, legal and judicial reform and public oversight - where countries would need to implement reforms to address corruption.³⁴ There was no regard for pre-existing frameworks through which countries had been tackling corruption before the foray of the Bank into anticorruption. In this same vein, there was no recognition of the economic, social, cultural and political diversity of the countries where these policies would be implemented. Irrespective of where each country was regarding these variables, they simply had to implement these reforms if they were serious about tackling corruption.

The IMF, like the Bank, also put forward a range of general reforms. These reforms aimed at improving governance in countries in aspects of the public sector with a potential to impact macroeconomic performance. They included better fiscal expenditure control, publication of audited accounts of public agencies and state enterprises, streamlined and less discretionary revenue administration and improvements in central bank practices.³⁵ Again, these reform proposals also failed to recognise the specific contextual differences in countries. By all indications, this was clearly a top-down agenda to deal with corruption based on generic policies that aligned with the development ideologies of these institutions. The reform agenda reflected this: an arbitrary definition of corruption focused on the public sector,

³³ World Bank, *Helping Countries Combat Corruption* (n 23) 3.

³⁴ World Bank, *Helping Countries Combat Corruption: Progress at the World Bank Since 1997* (PREM, June 2000) 22.

³⁵ International Monetary Fund, 'Good Governance: The IMF's Role' (Washington, D.C. 1997) <<http://www.imf.org/external/pubs/ft/exrp/govern/govindex.htm>> accessed 2 February 2016.

proposals for institutional reforms in the public sector, a programme to adjust economic policy in ways that were favourable to private sector actors, fiscal control and a commitment to judicial reforms that emphasised a neoliberal conception of the rule of law.³⁶

On its part, the United Nations under the framework of UNCAC also took a broad and general view on actions that needed to be taken to address corruption. Some of the generic prescriptions in the Convention include the establishment of specialised anticorruption institutions, preventive anticorruption bodies and a code of conduct for public officials.³⁷ This generic and broad prescriptive nature of anticorruptionism signifies a couple of serious concerns that have constantly plagued law and development policies over the years.

Firstly, it points to the unduly broad, simplistic and arbitrary way IDIs and development experts conceptualise the development challenges of countries in the global South.³⁸ In this case, it concerns the expectation that a particular set of reforms would sufficiently deal with corruption in different countries. It masks the very wide-ranging number of actions and situations in which corruption could be manifested in distinct contexts. It also ignores the fact that even a specific act of corruption like bribery can be viewed differently within the legal, social and cultural frameworks of one country in contrast to another. Even within a particular country, different types of corruption may

³⁶ Alvaro Santos, 'The World Bank's Uses of the "Rule of Law" Promise in Economic Development' in David M. Trubek and Alvaro Santos (eds), *The New Law and Economic Development: A Critical Appraisal* (CUP 2006) 253-300.

³⁷ See Articles 36, 6 and 8 respectively of UNCAC.

³⁸ Tara Polzer, 'Corruption: Deconstructing the World Bank Discourse' (2001) Development Studies Institute Working Paper 01-18, 10
<<http://www.lse.ac.uk/internationalDevelopment/pdf/WP/WP18.pdf>> accessed 1 February 2017).

pose more serious development challenges at different periods in its history.³⁹ A recognition of this informs the need for a more flexible, pragmatic and context specific approach to controlling corruption with different policy responses required for different countries in different situations, and at different points in time.

The outcome of a failure to do this is illustrated by situations like that in Nigeria where the regime for anticorruption is equipped to deal with corruption engaged in for financial gain like bribery and embezzlement but less so for acts of corruption not engaged in for financial gain like favouritism and nepotism.⁴⁰ The problem with this is that, in a country where there are deep-rooted cultural, regional, ethnic and religious differences, corruption in terms of the latter could prove more costly than the former. The display of nepotism by a leader from a certain group has the potential of eroding patriotism and public trust in government, and engendering public resentment, violence and in extreme cases secessionist tendencies.⁴¹ In the long run, this might be more deleterious to development efforts than corruption in terms of financial misappropriations.

Recent events in Nigeria aptly illustrate this point. The current president of the country Muhammadu Buhari was elected on the promise of tackling corruption. He has however provided a peculiar corruption challenge which the current regime for anticorruption has proven inadequate to deal with. Since assuming office, he has

³⁹ An instance of how the challenge of corruption in a particular country can change in different periods is discussed below with reference to Nigeria.

⁴⁰ For a discussion of the classification of corruption into acts engaged for financial and non-financial gains, See Michael J. Trebilcock and Mariana Mota Prado, *What Makes Poor Countries Poor? Institutional Determinants of Development* (Edward Elgar Publishing Ltd 2011) 176-8.

⁴¹ See Majeed Dahiru, 'The Many Side Effects of Buhari's Sectionalism' *Premium Times* (Abuja, 11 August 2016) <<http://opinion.premiumtimesng.com/2016/08/11/174303/>> accessed 9 March 2017.

engaged in appointing his family members, friends, people from his ethnic group and his region of the country into key positions.⁴² The constitution of the country provides that appointments into bureaucratic, economic, media and political posts at all levels of government should be based on the principle of proportional sharing that reflects the federal character of the country.⁴³ This has however been blatantly ignored by the presidency.

A major factor that allowed this to happen is the vague nature of the constitutional and legislative provisions on federal character, which provides ample room for such favouritism and nepotism to be carried out.⁴⁴ However, more significant is the fact that, despite repeated public condemnation of the actions of the president in this regard,⁴⁵ no single anticorruption institution took the initiative to even investigate or take any form of action on the matter. Not even the Federal Character Commission which was established to enforce the principle of proportionality in appointments⁴⁶ called into question the actions of the presidency.

⁴² A good example of this can be found in the security and law enforcement sector where 14 out of 17 individuals appointed to lead various arms and agencies are from the North of the country, with only 3 of such appointments going to individuals from the South of the country. See Dayo Oketola, Fisayo Falodi and Jesusegun Alagbe, 'Southern Groups Knock Buhari's Pro-North Security Appointments' *Punch* (Lagos, 2 July 2016) <<http://punchng.com/southern-groups-knock-buharis-pro-north-security-appointments/>> accessed 9 March 2017.

⁴³ See Section 14 and Paragraph 8, Part 1 of the Third Schedule to the 1999 Constitution of the Federal Republic of Nigeria.

⁴⁴ Edigin Uyi Lambert, 'Ethnicity and the Federal Character Policy in Nigeria' (2011) 8(1) *A Journal of Contemporary Research* 214-222; Ladipo Adamoleku, John Erero and Basil Oshionebo, "'Federal Character" and Management of the Federal Civil Service and the Military' (1991) 21(4) *Publius* 75-88.

⁴⁵ Shaka Momodu, 'Is Buhari's Nepotism the Worst in Nigeria's History?' *This Day* (Lagos, 12 August 2016) <<https://www.thisdaylive.com/index.php/2016/08/12/rail-of-hope-from-16-years-of-waste/>>; Hassan Adebayo, 'Protesters Storm Abuja, Accuse Buhari's Govt of Nepotism, Illegal Recruitment' *Premium Times* (Abuja, 27 July 2016) <<http://www.premiumtimesng.com/news/headlines/207673-protesters-storm-abuja-accuse-buharis-govt-nepotism-illegal-recruitment.html>>; Vanguard, 'Nigerians are Suffering Because of Buhari's Nepotism - Fayose' (Lagos, 14 August 2016) <<http://www.vanguardngr.com/2016/08/nigerians-suffering-buharis-nepotism-fayose/>> accessed 9 March 2017.

⁴⁶ See Part 1 of the Federal Character Commission (Establishment) Act, Cap F7, LFN, 2004.

Whilst this latter fact may be because of broader issues of political influence on the activities of state institutions, the important point here is that actions of this nature are rarely conceptualised as corruption within the anticorruption regime in Nigeria and are never treated as such. Definitions of corruption in anticorruption legislation do not extend to actions like nepotism, concentrating rather on financial and economic aspects of corruption. As noted earlier, this reflects the undue economic focus of the current anticorruption agenda. It further demonstrates the limitations of the current anticorruption agenda in taking into consideration issues of corruption that are peculiar to individual countries.

Even in situations where differences in the understanding and experiences of corruption in countries are recognised,⁴⁷ they are considered under the broad established notion of what constitutes corruption and the appropriate ways of addressing it. Hence, adaptations according to local realities are only admitted to the extent of aiding the implementation of the fundamentals of the already-established agenda.⁴⁸

The second concern with the generic nature of the global anticorruption agenda is the tendency of policy-makers to prescribe solutions for the development problems of countries in the global South, with little regard for pre-existing systems already dealing with such challenges at country level. Hence anticorruption efforts are not built on an understanding of what has worked and what has not worked in the past, which could inform the appropriate reforms. Doing this with reference to Nigeria for instance would

⁴⁷ World Bank, *Helping Countries Combat Corruption: Progress at the World Bank Since 1997* (n 34) 12.

⁴⁸ Schmitz (n 10) 59.

have revealed that - based on the experience of the country since independence - the creation of anticorruption institutions that were directly dependent on executive will would struggle to succeed. The failure to take such prior contextual experiences into consideration has meant that the current anticorruption regime continues to repeat the same mistakes of past efforts to address corruption, despite the introduction of new laws, institutions and policies.

This reiterates a point that has been repeatedly made and ignored in law and development. Reforms of the type exemplified by anticorruptionism - based on policies determined at a global level to be adopted at the local level - cannot be simply imposed by a dominant system on a subordinate one without being necessarily adapted to the historical, socio-economic and political reality of the subordinate system.⁴⁹

6.2.2 Influence of International Financial Institutions (IFIs)

The overwhelming influence of IFIs on the policies, programmes and overall agenda of anticorruptionism is evident from the history of the field itself, considered throughout this work. It is no coincidence that the discussion of the approach to corruption in the current moment of law and development has centred around the World Bank. The Bank has been at the foundation of the evolution of anticorruption in the last few

⁴⁹ Polzer (n 38) 5.

decades.⁵⁰ Its broader governance agenda has also been reinforced by the policies of its sister institution, the IMF.⁵¹

This influence is obvious, for instance, from the fact that even though UN institutions were concerned about issues like corruption in the decades preceding the 1990s, it was only after the World Bank birthed its governance programme that a UN mechanism to deal with corruption took hold. As discussed in chapter three,⁵² previous efforts to introduce corruption into the international development agenda include the passing of a non-binding General Assembly resolution and the proposal of code of conduct for transnational corporations by ECOSOC. These were all unsuccessful.

It is rather ironic that these failed efforts to introduce anticorruption into the global agenda were initiated by countries in the global South on which the current anticorruption agenda is focused. The lack of support from global North countries for these efforts at the UN has been attributed to the fact that these measures were pursued as part of the drive for a New International Economic Order (NIEO).⁵³ Built on a 1974 General Assembly Declaration,⁵⁴ the NIEO was an initiative of countries in the global South to reform the international political economy in a manner that would

⁵⁰ Marquette notes that an obvious indication of this is that the Bank was directly or indirectly responsible for the majority of the 'economics-led' research on corruption that appeared in the 1990s. See Marquette (n 23) 24.

⁵¹ International Monetary Fund, 'The Role of the IMF in Governance Issues: Guidance Note' (Approved by the IMF Executive Board, 25 July 1997)

<<http://www.imf.org/external/pubs/ft/exrp/govern/govindex.htm>> accessed 1 February 2017.

⁵² See discussion of the lack of attention to corruption in Nigeria by IDIs in section 3.3.2 above.

⁵³ See Mohammed Bedjaoui, *Towards a New International Economic Order* (Holmes & Meier 1979).

⁵⁴ UNGA Res 3201 (S-VI) (1 May 1974) UN Doc A/RES/S-6/3201.

be fair and favourable to their development.⁵⁵ The above corruption-related efforts at the UN were therefore intended to give these countries jurisdiction over acts of corruption committed by multinational corporations within their territories. This was necessary as such acts were, in most cases considered violations of the rights to self-determination and non-intervention of these countries.⁵⁶ However the rejection of the concept of the NIEO by countries in the global North, especially the US, ultimately led to the failure of these efforts.⁵⁷ And this remained the case until the commencement of the World Bank's governance programme. This was however directed at public sector corruption within countries, rather than the international dimensions of corruption like the activities of multinational corporations in the private sector.

Apart from the UN, the emergence of policies and instruments intended to deal with corruption in the work of regional organisations, civil society, bilateral donor agencies and other international actors in the period following the introduction of the Bank's governance agenda and anticorruption strategy is testament to its overwhelming influence. More so, the Bank is undoubtedly the foremost actor in the development industry in the past half century or so, with a budget and expertise that gives it economic leverage over poor governments especially in SSA.⁵⁸ This influence has made the Bank central to mainstream development discourse and practice.⁵⁹ There

⁵⁵ Karl P. Savant, 'The Negotiations of the United Nations Code of Code on Transnational Corporations' (2015) 16 *The Journal of World Investment and Trade* 11-87.

⁵⁶ Surinder K. Verma, 'International Code of Conduct for Transnational Corporations' (1980) *Indian Journal of International Law* 20-23. An extreme example of this was the financial involvement of ITT in the 1973 coup that removed leftist Chilean President Allende and replaced him with General Pinochet who favoured foreign interests and investors like ITT.

⁵⁷ James Gathii, 'International Law and Eurocentricity' (1998) 9 *European Journal of International Law* 184-205.

⁵⁸ See Arturo Escobar, *Encountering Development: The Making and Unmaking of the Third World* (Princeton University Press 2011) 55-101.

⁵⁹ According to Moore, the influence of the Bank is such that it has become the singular upholder of development orthodoxy. See David B. Moore, 'Development Discourse as Hegemony: Toward an

are few other areas in the field of development where the predominance of the Bank has had as much impact as in anticorruption. In fact, the Bank by its own admission tailors its strategy to influence other development actors by 'adding voice and support to international efforts to reduce corruption'.⁶⁰ The effect of this role is also recognised and confirmed by other IDIs.⁶¹

The significance of this influence in the context of this work is that financial institutions like the World Bank and the IMF are not just value-neutral institutions dedicated to an unbiased development agenda. Their programmes reflect their ideological base and the policy priorities of their shareholders which are still substantially countries in the global North with a commitment to development based on neoliberal principles.⁶² These principles are therefore duly reflected in the economic and market-oriented focus and emphasis of the global anticorruption agenda. The impact of this focus on anticorruptionism is considered next.

6.2.3 The Predominance of the Economic Paradigm of Development

As pointed out in the last chapter, the introduction of anticorruptionism in development is considered as part of the broader comprehensive approach to development that

Ideological History - 1945-1995' in David B. Moore and Gerald J. Schmitz (eds), *Debating Development Discourse: Institutional and Popular Perspectives* (Macmillan Press 1995) 1-53.

⁶⁰ World Bank, *Helping Countries Combat Corruption* (n 23) 3.

⁶¹ See for instance, the admission of the IMF that its governance agenda is tailored after that of the World Bank and that it refers issues dealing with corruption and outside its limited mandate to the Bank.

International Monetary Fund, 'The Role of the IMF in Governance Issues: Guidance Note' (Approved by the IMF Executive Board, 25 July 1997)

<<http://www.imf.org/external/pubs/ft/exrp/govern/govindex.htm>> accessed 1 February 2017.

⁶² Kapur, Lewis and Webb (n 8) 450-452.

defines the new developmentalism.⁶³ This comprehensive conception had been broached by scholars and institutions like the United Nations since the inception of the post-war development era.⁶⁴ However, it was only mainstreamed around the turn of the century. This coincided with the introduction of anticorruptionism in the late 1990s, leading to the seeming consensus that the attention to corruption is testament to the broader understanding of development during this period.

However, as established above, the foundations of anticorruptionism predate the mainstreaming of the comprehensive approach to development.⁶⁵ Its obvious links with the governance agenda suggest that it serves to buttress the precepts of the predominant market-centric economic development paradigm. Governance reforms were introduced to strengthen this paradigm, and not in pursuance of a supposed need to ensure comprehensive development. Any relationship with such broader development objective - without denying that such association exists - is simply ancillary or at best coincidental. This is further reinforced by the relative emphasis on economic and fiscal issues in the strategy of the current anticorruption agenda.⁶⁶

⁶³ World Bank, *Helping Countries Combat Corruption: Progress at the World Bank Since 1997* (n 34) 4. See the discussion of this broader approach to development in section 5.1 of chapter 5.

⁶⁴ See James Midgley, *Social Development: The Development Perspective in Social Welfare* (SAGE 1995); UNDP, *Human Development Report 1992* (OUP 1992); Philip Alston, 'Making Space for New Human Rights: The Case of the Right to Development' (1988) 1 *Harvard Human Rights Yearbook* 3-40; Dudley Seers, *The Meaning of Development* (Institute of Development Studies 1969).

⁶⁵ Even though the move towards emphasising development in other aspects of society apart from the predominant economic conception gained momentum in the 1990s, especially with the annual publication of the UN's Human Development Reports, the most definitive event in this regard was the issuance of the World Bank's comprehensive development framework which took place in 1999. See World Bank, 'Comprehensive Development Framework'.

<<http://web.worldbank.org/WBSITE/EXTERNAL/EXTABOUTUS/EXTWEBARCHIVES/0,,MDK:22201409~menuPK:64654237~pagePK:64660187~piPK:64660385~theSitePK:2564958,00.html>> accessed 1 March 2017.

⁶⁶ Reforms in the areas of management of public resources, maintaining stable and transparent economic and regulatory environments, reform of institutions like the central bank, treasury, tax and customs authorities, deregulation and demonopolisation, general financial controls, etc. all attest to this emphasis. See International Monetary Fund, 'Good Governance: The IMF's Role' (Washington, D.C. 1997) <<http://www.imf.org/external/pubs/ft/exrp/govern/govindex.htm>> accessed 2 February 2017; World Bank, *Helping Countries Combat Corruption: Progress at the World Bank Since 1997* (n 34) 4.

Anticorruptionism cannot therefore be understood as neutral as it 'supports a particular economic account of development'.⁶⁷

The policies and programmes of anticorruptionism reflect this economic foundation in a number of ways. A critical aspect of this is that anticorruption efforts, in accordance with principles of neoliberalism, situate the blame for development failures away from the market and onto the state. The immediate outcome of this is that efforts to address corruption focus on the state, which is put under immense pressure to act. This is the case even in situations where private-sector corruption might be causing more harm to development than corruption attributable to the state.⁶⁸ Issues like poor environmental practices, human rights violations and anti-competitive behaviour which may all be occasioned by corruption in the private sector and a reliance on markets end up getting less attention.⁶⁹

For so many years, global anticorruption efforts have struggled to provide policies targeted at dealing with private-sector corruption - in the same way as policies directed at public sector corruption - despite its obvious impact on development.⁷⁰ Action in this area is only beginning to pick up pace.⁷¹ The progress that could have been

⁶⁷ Goodwin and Rose-Sender (n 11) 222.

⁶⁸ A recent report by the United Nations Economic Commission for Africa (UNECA) iterated this point by noting how current indices that measure corruption concentrate on public sector corruption whilst ignoring corruption by especially multinational corporations operating in Africa and international dimensions of corruption generally. See UNECA, *Africa Governance Report IV: Measuring Corruption in Africa: The International Dimension Matters* (Addis Ababa 2016) xi-xviii.

⁶⁹ Joseph Stiglitz, 'Whither Reform? Ten Years of Transition' (Keynote Address at Annual World Bank Conference on Development Economics, Washington D.C, 28-30 April 1999) 5-8 <<http://siteresources.worldbank.org/DEC/Resources/84797-1251813753820/6415739-1251814010799/stiglitz.pdf>> accessed 8 February 2017.

⁷⁰ The failure of various efforts at the UN to deal with corruption by transnational corporations, including through the mechanism of a code of conduct attests to this. See Theodore H. Moran, 'The United Nations and Transnational Corporations: A Review and a Perspective' (2009) 18(2) *Transnational Corporations* 91-112.

⁷¹ See for instance, the United Nations Global Compact and its efforts to deal with private sector corruption, DNV-GL and United Nations Global Compact, *IMPACT: Transforming Business, Changing*

achieved if this was done earlier can only be imagined and will become obvious as these efforts to tackle private sector corruption - both at the global and national levels - develop.

The blame on the state which informs the public-sector focus of anticorruption policies is, to an extent, an attack on the state itself. It evinces the World Bank's long-standing mistrust of the state in development processes.⁷² The simple mantra that private is good and public is bad is at the core of neoliberal thought and policies.⁷³ It is based on this notion that state interference in the market is conceptualised as corruption - in terms of rent-seeking - thereby amplifying corruption in the public sector without a corresponding conception of private sector corruption. David Kennedy made an apt reference to this conceptual bias when he observed that:

“When the government official uses his discretionary authority to ask a foreign investor to contribute to this or that fund before approving a license to invest, that is corruption. When the investor uses his discretionary authority to invest to force a government to dismantle this or that regulation, that is expertise. When pharmaceutical companies exploit their intellectual property rights to make AIDS drugs unavailable in Africa while using the profits to buy sport teams,

the World (UN Global Impact 2015)

<<https://www.unglobalcompact.org/docs/publications/ImpactUNGlobalCompact2015.pdf>> accessed 10 March 2017.

⁷² Gustav Ranis, 'The World Bank Near the Turn of the Century' in Albert Berry, Roy Culpeper and Francis Stewart (eds), *Global Development Fifty Years After Bretton Woods* (Palsgrave Macmillan 1997) 72-89.

⁷³ Goodwin and Rose-Sender (n 11) 227.

*that is not corruption, but when governments tax profits to build palaces, that is corruption and so forth.*⁷⁴

An outcome of this attack on the state is how it erodes citizens' trust and faith in their governments to act in their best interest.⁷⁵ With anticorruption institutions established by the state, the transfer of such lack of trust to their operation negatively affects their efforts to curb corruption. It does so by stripping such institutions of the support and cooperation they require from the general citizenry to be more effective in implementing reforms.⁷⁶ James Jacobs refers to this as a situation where countries become vulnerable to 'too much corruption and too much anticorruption ideology'.⁷⁷ This creates a vicious circle in which the state is blamed for corruption and is therefore under pressure to act against it. The state however struggles to be effective in doing so, partly because it is deprived of the needed support from the public for the success of its efforts, the lack of support arising from the often-undue blame on the state for corruption and its negative development outcomes. The examination of Nigeria's anticorruption regime in this thesis demonstrates the reality and cost of this vicious circle on anticorruption efforts.

⁷⁴ David Kennedy, 'The International Anti-Corruption Campaign' (1999) 14 Connecticut Journal of International Law 455, 462.

⁷⁵ Mark Gallagher, *Rent-Seeking and Economic Growth in Africa* (Westview Press 1991) 31.

⁷⁶ John Mihevc, *The Market Tells Them So: The World Bank and Economic Fundamentalism in Africa* (Zed Books 1995) 135-136.

⁷⁷ James B. Jacobs, 'Dilemmas of Corruption Control' in Stephen Kotkina and Andras Sajo (eds), *Political Corruption in Transition: A Sceptic's Handbook* (Central European University Press 2002) 81, 83.

6.2.4 The Role of Data

One of the most striking differences between law and development in its first and second moments on the one hand, and the current moment relates to the availability and use of data on corruption. Whereas there was previously little or no data on corruption as discussed in section 4.1.3 above, there is now surplus data both on the levels of corruption in countries and on the quality of anticorruption and governance measures.⁷⁸ This change has however not proved helpful to current anticorruption efforts.

This availability of data should ordinarily be a welcome development. It satisfies a major critique of earlier moments of law and development which referenced the lack of quality data as partly responsible for the lack of attention to corruption in those periods.⁷⁹ The availability of data should also be considered positive in terms of providing useful information for more informed formulation of anticorruption policy. However, this has not been the case for several reasons concerning the nature of available data and its underlying purposes.

⁷⁸ Indicators of corruption like Transparency International's CPI now provide comprehensive annual assessments of the level of corruption in countries around the world. In similar vein, the World Bank's WGI is a tool that measures the quality of governance in over 200 countries on a range of dimensions including voice and accountability, government effectiveness, rule of law and control of corruption. See Transparency International, 'Corruption Perceptions Index: Overview' <<http://www.transparency.org/research/cpi/overview>> accessed 10 March 2017; Daniel Kaufmann, Aart Kraai and Massimo Mastruzzi, 'The Worldwide Governance Indicators: Methodology and Analytical Issues' (2010) *Global Economy and Development* at Brookings 1-29.

⁷⁹ Thomas Carothers (ed), 'The Problem of Knowledge' in *Promoting the Rule of Law Abroad: In Search of Knowledge* (Carnegie Endowment for International Peace 2006) 15; Elliot M. Burg, 'Law and Development: A Review of the Literature and Critique of "Scholars in Self-Estrangement"' (1977) 25 *American Journal of Comparative Law* 492.

Firstly on its nature, the statistical and composite nature of current measures of corruption makes them devoid of easily understandable and actionable information that would be useful for anticorruption institutions and stakeholders.⁸⁰ Most of the current tools are composed of numerical representations which provides little practical insights that could inform the choice of appropriate policy response in each country.⁸¹ Hence, beyond drawing attention to the incidence of corruption, the nature of these indicators limits their utility in enhancing anticorruption efforts. Instead, they have largely rather become effective tools for pressuring governments, sometimes unduly, to take action against corruption in their respective countries, with no specifics on how exactly to achieve this from the information available from the data.⁸² Whilst the objective of drawing attention to the need to curb corruption proved significant in the early years of the anticorruption era, the relevance of this in the current moment of heightened attention to corruption is debatable, especially as these indicators contribute little to anticorruption efforts.⁸³

Despite these obvious limitations, the current statistical aggregate measures of corruption continue to enjoy widespread acceptance. This is attributable to their usefulness for economic actors and IDIs. Indices like the CPI and WGI are important data sources especially for transnational corporations and other enterprises when

⁸⁰ Global Integrity and UNDP, *A User's Guide to Measuring Corruption* (Oslo, Norway 2008) 3.

⁸¹ Francisco Javier-Urra, 'Accessing Corruption - An Analytical Review of Corruption Measurement and its Problems: Perception, Error and Utility' (2007) Edmund A. Walsh School of Public Service, Georgetown Washington 8.

⁸² Gauthier De Beco, 'Monitoring Corruption from a Human Rights Perspective (2011) 15(7) The International Journal of Human Rights 1110.

⁸³ Mlada Bukovansky, 'Corruption Rankings: Constructing and Contesting the Global Anti-Corruption Agenda' in Alexander Cooley and Jack Snyder (eds), *Ranking the World: Grading States as a Tool of Global Governance* (CUP 2015) 60-84; Global Integrity and UNDP, *A User's Guide to Measuring Corruption* (Oslo, Norway 2008) 3.

accessing risk in making investment decisions.⁸⁴ In similar vein, bilateral and multilateral donor institutions also use these indicators in making lending and assistance decisions.⁸⁵ Their importance is underlined by the fact that governance considerations have, since the rise of anticorruptionism, become significant factors in such decisions.⁸⁶

Furthermore, the dominance of these indicators can be understood in the light of their role in perpetuating the current global anticorruption regime. The annual releases of these indices highlight the level of corruption in countries, especially in SSA, and thereby justify the sustenance of intense anticorruption efforts.⁸⁷ In addition to pressuring countries to take action against corruption, these indices fuel the demand for assistance for anticorruption reforms which constitute a substantial part of current global development efforts in this era of good governance.⁸⁸ This latter point does not question the relevance of governance reforms and assistance rendered towards such reforms generally. However, when considered from the perspective of the generic nature of these reforms, their neoliberal underpinnings and the insignificant results achieved thus far in particular countries in forestalling corruption, the role of data in

⁸⁴ Omar E. Hawthorne, *Do International Corruption Metrics Matter: The Impact of Transparency International's Corruption Perceptions Index* (Lexington Books 2015) 77-96. Perry-Kessaris argues that the rise of indicators has, at a broader level, become a form of economic imperialism that subjects the domain of legal and institutional reforms to the economic methods of marketisation, mathematisation, and quantification. See Amanda Perry-Kessaris, 'Prepare Your Indicators: Economics Imperialism on the Shores of Law and Development' (2011) 7(4) *International Journal of Law in Context* 401-421.

⁸⁵ World Bank, *Implementation Plan for Strengthening World Bank Group Engagement on Governance and Anticorruption* (Washington, D.C 2007) 21-22; International Monetary Fund, *Review of the Fund's Experience in Governance Issues* (Washington, D.C 2001)

⁸⁶ Carlos Santiso, *Governance Conditionality and the Reform of Multilateral Development Finance: The Role of the Group of Eight* (University of Toronto Press 2002) 21-22.

⁸⁷ Vinery Bhargava (ed), 'Curing the Cancer of Corruption' in *Global Issues of Global Citizens: An Introduction to key Development Challenges* (World Bank 2006) 341-370.

⁸⁸ The World Bank for instance, hinges its support to countries in tackling corruption on a demand for such support from the countries. See World Bank, *Helping Countries Combat Corruption: The Role of the World Bank* (n 23) 3.

sustaining this particular regime of governance reforms necessitates query. The fact that this has not happened much is only testament to the subservience of their relevance in enhancing national anticorruption efforts to the wider international interests which they appear to serve suitably.

The instrumentality of data in justifying and sustaining the current anticorruption agenda is further reinforced by the history of the measurement of corruption. The emergence of corruption as a central explanation for the failures of development policies - especially the economic adjustment policies of the World Bank and the IMF - and the resulting turn to good governance as a panacea to corruption flies in the face of empirical evidence.⁸⁹ Studies emanating from these institutions linking corruption and development only ensued after the commencement of the governance agenda. In other words, instead of empirical studies that show the negative impact of corruption on development providing the foundation for anticorruption policies, the data rather came after those policies.

For this reason, Booth and Cammack note that the governance agenda is an ideological construct and not a scientific concept supported by evidence as it is now made out to be.⁹⁰ It was therefore only after the World Bank had decided to get involved in good governance reforms that the objective of 'defining, measuring, and

⁸⁹ Goodwin and Rose-Sender (n 11) 226.

As noted in the introductory chapter to this work, good governance is used interchangeably with anticorruption in current development discourse. And in the literature of the World Bank in particular, the term is used as being antithetical to corruption, thereby providing an ideological justification for the Bank's anticorruption work.

For an example of the use of the work in this context, see Daniel Kaufmann, 'Human Rights and Governance: The Empirical Challenge' in Philip Alston and Mary Robinson, *Human Rights and Development: Towards Mutual Reinforcement* (OUP 2005) 352-402.

⁹⁰ David Booth and Diana Cammack, *Governance for Development in Africa: Solving Collective Action Problems* (Zed Books Ltd 2013) 123.

finding causes and effects [of corruption] commenced.⁹¹ That was when the Bank started producing studies that showed, for instance, that there was a correlation between corruption and income per capita, infant mortality and literacy rate.⁹² Similarly, the systematic measurement of the quality of governance by the Bank began in 1996 which was years after the initiation of the governance agenda at the Bank and around the same time at its involvement specifically in anticorruption.⁹³ Suddenly, a whole new realm of experience and knowledge opened up and information that previously was not, became relevant and 'sayable'.⁹⁴

The anticorruption agenda and the data supporting it can therefore be best understood in terms of their role in locating development failures with countries in SSA and the protection of the market economy model of development from criticism.⁹⁵ The ever-increasing amount of data that highlight the prevalence of corruption in countries that are relatively less developed economically has aided in the perpetuation of this narrative. In addition to reinforcing the governance agenda, this enacts a self-fulfilling prophecy for poor countries as their positions on indices like the CPI help to reinforce their need for reforms.⁹⁶ This is worsened by the fact that the use of a ranking system

⁹¹ Polzer (n 38) 10.

⁹² Alvaro Santos, 'The World Bank's Uses of the "The Rule of Law" Promise in Economic Development' in David M. Trubek and Alvaro Santos (eds), *The New Law and Economic Development: A Critical Appraisal* (CUP 2006) 274. Following the same pattern, there are now a wide range of especially economic studies showing the impact of corruption on inequality, expansion of unofficial economy, poverty and overall development amongst others. See Sanjeev Gupta, Hamid Davoodi and Rosa Alonso-Terme, 'Does Corruption Affect Income Inequality and Poverty?' (2002) 3(1) *Economics of Governance* 22-45; Simon Johnson et al., 'Why Do Firms Hide? Bribes and Unofficial Activity After Communism' (2000) 76 *Journal of Public Economics* 495-520.

⁹³ See World Bank, 'Worldwide Governance Indicators' <<http://info.worldbank.org/governance/wgi/#home>> accessed 10 March 2017.

⁹⁴ Polzer (n 38) 10. On the impact of studies being used to justify a pre-existing narrative, see Michel Foucault, 'Politics and the Study of Discourse' in Graham Burchell, Colin Gordon and Peter Miller (eds), *The Foucault Effect: Studies in Governmentality* (The University of Chicago Press 1991) 53-72.

⁹⁵ Goodwin and Rose-Sender (n 11) 229.

⁹⁶ Bukovansky (n 83) 79.

leaves such countries languishing perpetually at the bottom with little chance of improving their position in any significant way. Andersson and Heywood argue that this creates a form of 'corruption trap' whereby the inferior position of such countries on the scale makes them unattractive to investment and aid, which in turn deprives them of the resources needed to make the progress that can alter their ranking.⁹⁷

6.2.5 Blind spots of Law and Development

A persistent problem of law and development since its inception is how policies often lead to outcomes that are different from the development objectives originally intended. This is usually because such policies are shaped by assumptions which, although appearing logical in theory, prove to be far from reality or flawed in relation to the particular contexts in which they are implemented.⁹⁸ In section 4.1.5 of chapter four for instance, this thesis discussed how the mistaken assumptions of legal liberalism in earlier moments of law and development contributed to providing an environment for corruption to thrive in countries in SSA.

Trubek and Galanter in particular pointed out how during the first moment of law and development 'increased instrumental rationality in legal processes together with government regulation of economic life [may have] contributed to the economic wellbeing of only a small elite, leaving the mass no better, or even worse off.'⁹⁹ Indeed,

⁹⁷ Stiffen Andersson and Paul M. Heywood, 'The Politics of Perception: Use and Abuse of Transparency International's Approach to Measuring Corruption' (2009) 57 *Political Studies* 746-767.

⁹⁸ Scott Newton, 'The Dialectics of Law and Development' in David M. Trubek and Alvaro Santos (eds) *The New Law and Economic Development* (CUP 2006) 174-202.

⁹⁹ David. M. Trubek and Mark. Galanter: "Scholars in Self-Estrangement: Some Reflections on the Crisis in Law and Development Studies in the United States" (1974) *Wisconsin Law Review* 1084.

the earlier discussion of corruption in Nigeria demonstrates how those in power used their access to the machinery of the state to unduly enrich themselves and their allies. This notwithstanding and over forty years after warnings against law and development policies being informed by assumptions not based on contextual realities,¹⁰⁰ the same mistakes are being repeated with the current anticorruption agenda.

An illustration of this can be found in the conflicting assumptions or blind spots in the approach of anticorruptionism to the issues of formalism and discretion.¹⁰¹ A central focus of the current neoliberal ideology of law and development is its emphasis on formalisation.¹⁰² This entails a conception and application of law and legal institutions as clean and formal instruments for enabling economic activity, rather than the culturally and politically entangled social systems that they are.¹⁰³ Based on this, anticorruption laws and policies are created with the expectation that they will operate independently of the socio-political and cultural context of their application. This mistaken trust in the prospects of what has been aptly described as the ‘depoliticisation and technicalisation of development’,¹⁰⁴ explains why such programmes and policies failed to consider the real risk of political interference in the

¹⁰⁰ *ibid* 1062.

¹⁰¹ It is worth noting that, in similar vein, there are studies that examine, at a broader level, how policies of structural adjustment and good governance like privatisation might have created more opportunities for corruption to thrive rather than reduce corruption. See Indira Carr, ‘Corruption, The Southern African Development Community Anti-Corruption Protocol and the Principal-Agent-Client Model’ (2009) 5(2) *International Journal of Law in Context* 147-177; Jeff Huther and Anwar Shah, *Anti-Corruption Policies and Programs: A Framework for Evaluation* (World Bank 2001); Jane Duckett, ‘Bureaucrats in Business, Chinese Style: The Lessons of Market Reform and State Entrepreneurialism in People’s Republic of China’ (2001) 29 *World Development* 23-37.

¹⁰² David Kennedy, ‘The “Rule of Law”, Political Choices and Development Common Sense’ in David M. Trubek and Alvaro Santos (eds) *The New Law and Economic Development* (CUP 2006) 138.

¹⁰³ Frank Upham, ‘Mythmaking in the Rule-of-Law Orthodoxy’ in Thomas Carothers (ed), *Promoting the Rule of Law Abroad: In Search of Knowledge* (Carnegie Endowment for International Peace 2006) 75-104.

¹⁰⁴ See James Ferguson, *The Anti-Politics Machine: “Development”, Depoliticisation and Bureaucratic Power in Lesotho* (CUP 1990).

workings of anticorruption institutions and measures. This is the case even though the history of law and development shows that policies and institutions dependent on the will of political leadership have a high propensity to be co-opted for political goals.

The underlying assumptions of formalism further demonstrate how anticorruptionism disregards the reality of governance and seeks to impose policies that are impractical in the context of their application in specific countries. Formalism is based on a conception of the state as a public realm of administration where decisions are based on clear-cut rules with requisite predictability and certainty.¹⁰⁵ Such a management-oriented state is expected to provide an enabling environment for the private sector to thrive in a market economy.¹⁰⁶ Within this framework, the exercise of discretion by public officials is discouraged, such that the state is considered to be acting 'corruptly' when discretion is exercised in making political choices, instead of mechanically following laid-down rules.¹⁰⁷ This theorisation therefore creates the perfect justification of formalism:

“Where the processes of development are viewed as technical and apolitical, politically-based decisions are automatically suspect. Political acts or acts of discretion become corruption, further justifying the call for formalisation as a means of tackling corruption. In other words, formalisation in order to tackle corruption or rent-

¹⁰⁵ World Bank, *World Development Report 1997: The State in a Changing World* (OUP 1997) 99-109.

¹⁰⁶ David M. Trubek and Alvaro Santos (eds), *The New Law and Economic Development* (CUP 2006) 1-18.

¹⁰⁷ Susan Rose-Ackerman, *Corruption and Government: Cause, Consequences and Reform* (CUP 1999) 27-38.

*seeking creates the conditions which it allegedly is needed to tackle*¹⁰⁸

Whilst this makes sense at a theoretical level, it is far-fetched from reality in terms of implementation. By attacking discretion, formalism aims to discredit what is not only a necessary element of governance but is inherent to governing well - the literal objective of good governance. The ability to exercise discretion allows governments the needed flexibility to respond to the needs and interests of its people as they arise.¹⁰⁹ Hence the attempt to prohibit discretion under the guise of tackling corruption shows an inclination to impose on countries a policy that is not only impractical, but might actually be inimical to good governance. In fact, these are standards that do not represent the reality of governance in the western countries that are supposed to be the models of good governance.¹¹⁰ Polzer iterates this point in noting that the ideal-type well-performing government which the World Bank's anticorruption strategy pledges to assist countries establish - based on a professional civil service, sound financial management, disciplined policy-making, etc - is not only implicitly contrasted with the governance milieu of countries in SSA, but also 'has no basis in empirical analysis of how industrialised bureaucracies actually function.'¹¹¹

In promoting such far-fetched notions of formalism therefore, anticorruptionism obscures the political choices that not only need to be made in the normal process of

¹⁰⁸ Goodwin and Rose-Sender (n 11) 236.

¹⁰⁹ Jacqueline Vaughn and Eric Otenyo, *Managerial Discretion in Government Decision Making: Beyond the Street Level* (Jones and Bartlett Publishers Inc 2007) xii - xviii.

¹¹⁰ William De Maria, 'The New War on African "Corruption": Just Another Neo-Colonial Adventure?' (4th International Critical Management Studies Conference, Cambridge, 4-7 July 2005) 7.

¹¹¹ Polzer (n 11) 19.

governance, but are constantly being made by political leadership in countries.¹¹² In Nigeria, despite the large-scale institutional reforms designed to address corruption, the effectiveness of such efforts continues to be dictated by the exercise of discretion by political leadership. Areas where this is evident include decisions on those appointed to lead such institutions, the funds allocated to such institutions, the independence granted them to perform their duties and the authority conferred on such institutions by their enabling laws. As the discussion in section 5.5.3 of the previous chapter shows, the effectiveness of anticorruption efforts is largely dependent on the discretion exercised by political leaders in deciding on these issues. There is therefore an inherent internal inconsistency in reiterating the need for political will to tackle corruption whilst simultaneously promoting reforms that are designed to curtail political choices. The attempt to attack or disregard, rather than take into cognisance the role of discretion in governance in the formulation of anticorruption policies belies reality and questions the pragmatism of such reforms.

Overall, the indifference towards the incidence of such unintended outcomes and internal inconsistencies in anticorruptionism shows the rather arrogant and unjustified display of confidence and certainty with which the governance agenda has proceeded.¹¹³ The language of policy documents and the programming drive demonstrates a level of trust in expected outcomes that is not justified by the problematic and critique-laden history of law and development thought and practice.

¹¹² Lala Camerer, 'Tackling the Multi-Headed Dragon: Prospects for a Single Anti-corruption Agency in South Africa' (1999) Institute for Security Studies Occasional Paper No 38 <<https://issafrica.org/research/papers/tackling-the-multi-headed-dragon-evaluating-prospects-for-a-single-anti-corruption-agency-in-south-africa>> accessed 13 February 2017.

¹¹³ The World Bank in particular has built its approach to governance reforms on a self-assurance of representing a consensus on the right reforms to reduce corruption, built on research and expertise. There is hardly any admission of the possibility that proposed reforms might be ineffective in particular contexts or that a negative effect might result. See Polzer, 'Corruption: Deconstructing the World Bank Discourse' (n 38) 7.

As noted above, perhaps this is made possible by the readily available option of blaming the state for any such undesirable consequences that result from anticorruption,¹¹⁴ the culpability of the state for underdevelopment being at the very foundation of structural adjustment and the governance agenda itself.¹¹⁵ The reality of the situation however is that the nature of anticorruption reforms, their underlying ideologies and implementation strategies are just as culpable for the failures of anticorruptionism.

6.6 Conclusion

The discussion in this chapter shows that the problems of the law and development movement regarding corruption have come full circle in the current moment. Despite the acclaimed attention to corruption and talk about lessons learnt in the first and second moments and espoused in the third, not much has changed practically. The problems of the movement which accounted for its lack of attention to corruption for decades have remained despite incidental changes in policy.

¹¹⁴ This is in tandem with the general tendency to blame failures of development policies on internal factors in Africa rather than looking at external factors or factors inherent to the policies themselves. See Patrick Chabal, 'The African Crisis: Context and Interpretation' in Terence Ranger and Richard Werbner (eds), *Postcolonial Identities in Africa* (Zed Books 1996) 34.

¹¹⁵ It is significant that the distrust of the state in World Bank policies for instance is long-standing and predates the governance agenda. It was the central conclusion of the major background study to structural adjustment which was published in 1981. The study (also known as the Berg report after its principal author Elliot Berg) put the blame for Africa's poor performance in terms of development on bad government policies and provided the founding justification for structural adjustment policies to be implemented in SSA.

See World Bank, *Accelerated Development in Sub-Saharan Africa: An Agenda for Action* (Washington, D. C 1981) 4.

Instead of dealing with these problems, anticorruption has succeeded in disguising their incidence by providing an alternative and over-simplistic explanation for failures of development policies. The reference to institutional failures and corruption in particular, and the resulting prescription of good governance and anticorruption - which has driven the global development agenda in the last few decades - has led to an obvious neglect of long-standing problems of law and development. And like an untreated virus, these problems have become prominent factors in the challenges faced by the current approach to corruption under the new developmentalism.

As shown by the consideration of the anticorruption regime in Nigeria in section 5.5 of chapter five above, policies and programmes initiated to tackle corruption failed to take into cognisance pre-existing efforts to deal with corruption at the local level, and therefore did not improve on such efforts. Instead, the current regime of anticorruption is based on the same top-down structure and institutional framework that have been ineffective in the past. This approach smacks of some sort of expectation that this would lead to a different outcome this time around. Whether such assumption is based on the mere fact of the involvement of IDIs in anticorruption or that the creation of a new set of institutions within the same structure will create a difference, it has ultimately proven to be mistaken.

The result of this is that local efforts to deal with corruption under the current regime continue to be hampered by the same challenges that existed before the institution of the current anticorruption agenda. Whatever change has been occasioned by the rise of anticorruptionism at the global level - and there is ample evidence of such change - its impact in effectively addressing corruption at the local level has been

negligible. The increase in institutions and measures designed to deal with corruption has made little difference on the ground. This chapter has examined the reasons for this. The general conclusion is that the rise of anticorruptionism is neither causal nor symptomatic of any serious paradigm shift in policy-making and implementation in the third moment of law and development. Any association between the rise of anticorruption and a shift in development policy is simply coincidental and represents an expedient policy change intended to shore-up the predominant neoliberal development paradigm. The factors in the first and second moments of the movement that explain the evident disregard for corruption have therefore endured in the current moment and betray any acclaimed seriousness to deal with corruption in the development field.

Chapter Seven: THE RIGHTS-BASED APPROACH TO ANTICORRUPTION

7.0 Introduction

In 1995, at the dawn of anticorruptionism, Moisés Naím wrote *Corruption Eruption*, one of the most recognisable works on anticorruption.¹ In it, he examined the factors responsible for the sudden global attention to corruption and its ramifications. He also previewed various trends in the then-emerging ‘fight against corruption’.² In the concluding section of the article, aptly titled, ‘A Time for Action’ Naím expressed optimism in the prospect of shrinking corruption in the world to a historic minimum if global trends at the time continued. He reckoned that ‘with the necessary pressure and encouragement, the recent eruption in the global perception of corruption could turn out to be the catharsis world politics needed.’³

Arguably, not even Naím could have foreseen the acceleration of action against corruption in the decade following his work. Between 1995 and 2005 anticorruption research, instruments, policies and measures flourished all over the world. The anticorruption agenda dominated the works of global development institutions, international CSOs, academic institutions and think tanks, regional organisations and

¹ Moisés Naím, ‘Corruption Eruption’ (1995) 2 Brown Journal of World Affairs 245-261. Some of Naím’s views in this work have been explored earlier as part of the discussion of the perspectives on the incidence of corruption in SSA in section 2.4 of chapter 2.

² *ibid* 247. The expression ‘fight against corruption’ is one that has taken hold since the rise of anticorruptionism due to its usage in early works like Naím’s. However, it is one which this work does not subscribe to. Whilst its usage can be seen as drawing attention to the urgency and intensity of the need to take action against corruption, it has become quite subject to political usage over the years by both IDIs and political leaders in various countries. Also, it is the view of this work that it does not grasp appropriately the need to have well-considered and comprehensive responses to corruption. Hence other expressions like ‘address corruption’ and ‘handle corruption’ are preferred in this work.

³ *ibid* 258.

institutions within countries, especially in the global South.⁴ However, in spite of this and in stark contrast to the optimism expressed above, Naím in a reflective piece in 2005 came to the chilling conclusion that ‘the war on corruption is leaving the World worse than we found it.’⁵ Whilst recounting particular situations attesting to this fact, he noted further that the ‘war on corruption is undermining democracy, helping the wrong leaders get elected and distracting societies from facing urgent problems’.⁶ Daniel Kaufmann, a leading expert in anticorruption efforts and co-author of the worldwide governance indicators expressed a similar sentiment thus: ‘The last 10 years have been deeply disappointing. . . . Much was done, but not much was accomplished. What we are doing is not working.’⁷

The above views are representative of the growing questioning of the current anticorruption agenda in the last decade or so. Some works, like Naim question generally the efficacy of the whole agenda,⁸ whilst others question the policies and programmes of particular institutions like the World Bank.⁹ There are also works that are critical of the manifestations and ramifications of the agenda in particular regions and countries.¹⁰ A central theme that emerges from most of these works is the

⁴ For more on these measures that heralded the global anticorruption agenda, see Section 5.3 of this work.

⁵ Moisés Naím, ‘Missing Links: Bad Medicine’ (2005) 147 *Foreign Policy* 95-96.

⁶ *ibid.*

⁷ Daniel Kaufmann as quoted in Moisés Naím, ‘Missing Links: Bad Medicine’ *ibid.*

⁸ Palin S. Ivanov, ‘The Limits of a Global Campaign Against Corruption’ in Sarah Bracking (ed), *Corruption and Development: The Anti-Corruption Campaigns* (Palgrave Macmillan 2007) 28; William De Maria, ‘The New War on African “Corruption”: Just Another Neo-Colonial Adventure?’ (4th International Critical Management Studies Conference, Cambridge, 4-7 July 2005) 7; David Kennedy, ‘The International Anti-Corruption Campaign’ (1999) 14 *Connecticut Journal of International Law* 462.

⁹ Howard Stein, *Beyond the World Bank Agenda: An Institutional Approach to Development* (The University of Chicago Press 2008); Tara Polzer, ‘Corruption: Deconstructing the World Bank Discourse’ (2001) Development Studies Institute Working Paper 01-18, 10
<<http://www.lse.ac.uk/internationalDevelopment/pdf/WP/WP18.pdf>> accessed 1 February 2017).

¹⁰ Goran Hyden, ‘Political Accountability in Africa: Is the Glass Half-Full or Half-Empty?’ (2010) Africa Power and Politics Programme Working Paper 6
<<https://assets.publishing.service.gov.uk/media/57a08b08e5274a31e0000914/appp-working-paper-6.pdf>> accessed 17 March 2017; Alan Doig, Robert Williams and David Watt, *Measuring “Success” in Five African Anti-Corruption Commissions* (U4 Report 2005); Steve Kayizzi-Mugerwa (ed), *Reforming Africa’s Institutions: Ownership, Incentives and Capabilities* (United Nations University Press 2003).

questioning of the top-down, state-led institutional approach to dealing with corruption that the current anticorruption agenda espouses. Related to this are other issues like the application of a generic model across countries, the general inefficiency of anticorruption mechanisms, and the issue of political interference in the work of anticorruption institutions.¹¹

A major response to this growing body of critical thought has been calls for the consideration of bottom-up participatory anticorruption measures. Otherwise referred to as the rights-based approach to anticorruption (RBAA),¹² such measures aim to provide an alternative perspective to dealing with corruption in a manner that overcomes the problems of the current approach.¹³

This chapter looks at the background to this approach within the framework of law and development. It also considers its meaning and justifications, in terms of what advantages it brings to anticorruption efforts. Actions taken thus far towards operationalising this approach are also considered with a view to assessing the prospects of this approach for addressing corruption going forward.

¹¹ These issues are considered in-depth in the two preceding chapters of this work.

¹² In the rest of this work, this approach will be referred to in either the singular form of 'rights-based approach to anticorruption' or the plural form of 'rights-based approaches to anticorruption'. Whichever form is used, the meaning intended to be conveyed is the same. As the discussion that follows demonstrates, the approach is understood as comprising a range of different measures based on the same principles.

¹³ It is worth noting that whilst this has been the predominant response to criticisms of the current regime for anticorruption, there are also those who continue to look at ways of making the current top-down institutional approach to addressing corruption more effective. Recommendations made in this regard include anticorruption institutions increasing their monitoring activities to enhance the probability of catching corrupt officials, increasing negative incentives against corruption like guaranteeing that corruption is punished and ensuring that anticorruption policies in countries are aligned with the objectives of all stakeholders involved. These recommendations are however not considered seriously in this work because, to the extent that they are still based on the current institutional arrangement, there is no guarantee that implementing them would eradicate the broader problems identified in the foregoing chapters of this work, like inefficiency and political interference in anticorruption efforts. For more on these recommendations see Rema Hanna et al., *The Effectiveness of Anti-Corruption Policy: What Has Worked, What Hasn't and What We Don't Know: A Systemic Review* (EPPI Centre 2011) 4-6. See also UNDP, *Anti-Corruption Strategies: Understanding What Works, What Doesn't and Why? Lessons Learned from the Asia-Pacific Region* (UNDP 2014).

7.1 Background to the Rights-Based Approach to Anticorruption (RBAA)

The concept of a RBAA can be understood as emerging at the confluence of two separate but related approaches to development and governance that have flourished since the turn of the century: the rights-based approach to development, and ‘good fit’ approaches to good governance. Before looking at the rights-based approach in detail, it is important to examine its background under both approaches. Understanding and situating the rights-based approach against the background of both is expedient to having a balanced appreciation of its conception, evolution, justifications and prospects.

7.1.1 The Rights-Based Approach to Development

In the last few decades since the turn of the century, the concept of a rights-based approach to development has gained significant recognition and acceptance in the field of development. It has emerged as a post-comprehensive development framework (CDF) perspective to development. This is because it goes beyond just looking at a holistic view of development comprising economic, social, political and cultural components. It moves the discourse forward by putting the wellbeing of the human being at the centre of development through human rights. Integrating human

rights principles in development policies and programming has become standard practice for IDIs, and international CSOs, amongst others.¹⁴

The inroads made by the rights-based approach are demonstrated by the very wide range of development issues that are now expressed in the language of rights. These include education, health, decent work, environment and climate change, business and corporate social responsibility, housing and land, indigenous peoples, justice and the rule of law, migrants and refugees, water and sanitation, women and gender and children.¹⁵ The rights-based approach to anti-corruption is the manifestation of the extension of this trend to issues of governance. To properly situate this within the context of this work however, it is important to examine its roots in the rights-based approach to development and the implications of this for its conception and implementation.

The relationship between human rights and development can be traced as far back as the anti-colonialism struggles of countries in the global South. The demand for self-rule by nationalist and anti-colonial movements were considered as being based, not just on an aspiration for independence but also an entitlement to liberty and the use of resources by such countries for their development.¹⁶ In the post-independence development era however, the rights-based approach to development can best be

¹⁴ Andrea Cornwall and Celestine Nyamu-Musembi, 'Putting the "Rights-Based Approach" to Development into Perspective' (2004) 25(8) Third World Quarterly 1415, 1425-1429.

¹⁵ See HRBA Portal, 'UN Practitioners' Portal on Human Rights-Based Approaches to Programming: Topics' <<http://hrbaportal.org/topics>> accessed 17 March 2017.

¹⁶ Firoze Manji, 'The Depoliticisation of Poverty' in Deborah Eade (ed), *Development and Rights* (Oxfam GB 1998) 12-33. See also Mahmood Mamdani, *Citizen and Subject: Contemporary Africa and the Legacy of Late Colonialism* (Princeton University Press 1996). This history of rights and its relationship to development can also be deduced from the provisions of Article 1 of both the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights which states that '[A]ll peoples have a right to self-determination. By virtue of that right, they freely determine their political status and freely pursue their economic, social and cultural development.'

understood as having evolved initially from the expression of development outcomes in the language of rights and their inclusion in international human rights instruments.

Hence, the Universal Declaration of Human Rights (UDHR) provided for an education, adequate standard of living, decent work, property ownership, social security and other economic, social and cultural needs as rights.¹⁷ The International Covenant on Economic, Social and Cultural Rights (ICESCR) built on and expanded on the provisions of the UDHR in this regard.¹⁸ Similar provisions can also be found in other human rights instruments such as the Convention on the Rights of the Child (CRC).¹⁹ However the most vivid statement of development as a right came in 1986 with the United Nations Declaration of the Right to Development.²⁰ The declaration which was adopted as a UN General Assembly Resolution stated the right to development as 'an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realised.'²¹

Thus, in addition to stipulating development as a human right, the declaration also confirmed that the realisation of such a right presupposes the observance of all human rights - civil and political, economic, social and cultural. This advances the principles

¹⁷ See generally Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217 A(III) Articles 17, 22-27.

¹⁸ International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3.

¹⁹ Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3. The Convention provides for the rights to health, social security, adequate standard of living and education, amongst others for children directly or through their guardians where applicable. See Articles 24-28 of the Convention.

²⁰ UNGA Res 41/128 (4 December 1986) UN Doc A/RES/41/128.

²¹ *ibid* Article 1.

of indivisibility, interdependence and universality of all human rights.²² In the decade following the declaration, the right to development became one of the most important subjects in the field of human rights. In 1993, it was unanimously readopted as part of the Vienna Declaration and Programme of Action.²³ And in 1998 Indian economist Arjun Sengupta was appointed by the UN as an Independent Expert on the right to development; an office which produced a good number of reports on conceptual and practical issues pertaining to the right.²⁴

Despite certain critiques that question the impact of the right,²⁵ events in the field of development following the declaration attest to its role in the mainstreaming of rights issues in development. It also contributed to the eventual movement beyond just rights stipulations to the rights-based approach as a development policy. Furthermore, the right drew attention to the concept of human development and the importance of participation in the development process. In this respect, Article 2(1) of the declaration provides that '[T]he human person is the central subject of development and should be the active participant and beneficiary of the right to development.'

This focus on human development became a concept that flourished throughout the 1990s beginning with the publication by UNDP of the Human Development Reports

²² Helen Quane, 'A Further Dimension to the Interdependence and Indivisibility of Human Rights? Recent Developments Concerning the Rights of Indigenous Peoples' (2012) 25 Harvard Human Rights Journal 49-83.

²³ See World Conference on Human Rights, 'Vienna Declaration and Programme of Action' (25 June 1993, Vienna) <<http://www.ohchr.org/en/professionalinterest/pages/vienna.aspx>> accessed 17 March 2017.

²⁴ The mandate lasted from 1998 to 2004 when it was replaced by a high-level task force. The mandate of the Independent Expert is part of various other mechanisms established under the United Nations human rights system to deal with conceptual and practical issues on the right to development. For more on these and the work of the open-ended Working Group on the right, see OHCHR, 'Documents on Development and Human Rights' <<http://www.ohchr.org/EN/Issues/Development/Pages/Documents.aspx>> accessed 17 March 2017.

²⁵ Arne Vandenbogaerde, 'The Right to Development in International Human Rights Law: A Call for its Dissolution' (2013) 31(2) Netherlands Quarterly of Human Rights 187-209; Peter Uvin, 'From the Right to Development to the Rights-Based Approach: How "Human Rights" Entered Development' (2007) 17(4-5) Development in Practice 597-606.

which commenced in 1990 and continues to date.²⁶ These reports viewed development issues such as economic growth, trade, employment, political freedom, cultural values and social needs from the perspective of people, individually and collectively. Human development was therefore conceptualised as the process of enlarging people's freedoms and opportunities and improving their wellbeing.²⁷ To achieve this, according to UNDP's framework, the human capabilities of people need to firstly be enhanced through a long and healthy life, education, a decent standard of living etc. Therefore, development has to be about creating the right conditions for people, individually and collectively to have the choice to lead the productive and creative lives they value through the use of those capabilities.²⁸

In his landmark work, *Development as Freedom* published in 1999, Amartya Sen provided further conceptual clarity of the human development paradigm when he opined that freedom is the ultimate goal of economic life and the most efficient means of achieving general welfare.²⁹ According to Sen, development does not depend on an individual's attainment of basic needs - described as functionings in his work³⁰ - but rather on the individual's capabilities to attain such needs. Hence, it is the freedom to attain, and not the functionings themselves that should be the primary goal of development. In this understanding therefore, issues like famine, ignorance, unemployment, premature death, hunger, violation of political freedom, lack of access to healthcare, sanitation and clean water all amount to deprivations of a person's freedom - or 'unfreedoms' as he described them - which impede a person's capability

²⁶ See UNDP, 'Human Development Reports 1990-2015' <<http://hdr.undp.org/en/global-reports>> accessed 17 March 2017.

²⁷ UNDP, *Human Development Report 1995: Gender and Human Development* (OUP 1995) 11.

²⁸ *ibid.*

²⁹ Amartya Sen, *Development as Freedom* (OUP 1999) 13-34.

³⁰ It is worth noting that the term 'functionings' appears in earlier works by Sen including, Amartya Sen, *Inequality Re-Examined* (Harvard University Press 1992) 39-53.

to pursue and attain development.³¹ Like UNDP, Sen's work advocates for development processes to move away from the model of providing 'needs' to eradicate poverty to dealing with underlying inequities in societies that impede the freedom of people to participate in processes that will enhance their overall wellbeing and lead to their development.

The Human Development Report of 2000 proved to be a crucial document in the understanding of the rights-based approach to development. With the conception of rights and the declaration of the right to development particularly, having provided the foundation for the focus on human development, the report brought the discourse full circle by confirming the place of human rights within the human development framework. Aptly themed, 'Human Rights and Human Development' the report highlighted the objective of securing freedom for every human being as a common purpose shared by both human rights and human development.³² It noted that human rights provide an important mechanism through which people can lay claim on systems and to entitlements in society in order to enhance their capabilities. This will in turn enable them to enjoy freedom, the ultimate goal of development.³³ Furthermore, human rights add important principles and tools like transparency, accountability, participation and social justice to the assessment of development issues.³⁴

This however goes beyond just the legal guarantee of rights. The report looked at human rights as being an intrinsic part of development and conversely at development

³¹ *ibid* 25, 87-110. See also E. Wayne Nafziger, 'From Seers to Sen: The Meaning of Economic Development' in George Mavrotas and Anthony F. Shorrocks (eds), *Advancing Development: Core Themes in Global Economics* (Palgrave Macmillan 2007) 50-62.

³² UNDP, *Human Development Report 2000: Human Rights and Human Development* (OUP 2000) 19.

³³ *ibid* 21-3.

³⁴ *ibid*.

as a means of realising human rights.³⁵ This accords with Sen's emphasis on freedom being both a means and an end of development.³⁶ It is therefore on this understanding and the application of these principles that the rights-based approach to development has progressed. The definition of the approach post-2000 reflects this:

A rights-based approach is a conceptual framework of the process of human development that is normatively based on international human rights standards and operationally directed to promoting and protecting human rights. - (Mary Robinson, UN High Commissioner for Human Rights 2001).³⁷

The human rights approach to development means empowering people to take their own decisions, rather than being passive objects of choices made on their behalf. - (UK Department for International Development 2000).³⁸

A [democracy and] human rights approach translates poor people's needs into rights, and recognises individuals as active subjects and stakeholders. It further identifies the obligations of states that are

³⁵ *ibid* 2. In this regard, it is also important that the interdependent and mutually reinforcing nature of development and human rights was also confirmed by the United Nations Millennium Declaration of 2000. See UNGA, 'United Nations Millennium Declaration' UN Res 55/2 (8 September 2000) UN Doc A/RES/55/2.

³⁶ Sen (n 29) 36.

³⁷ Mary Robinson, 'Bridging the Gap Between Human Rights and development: From Normative Principles to Operational Relevance' (World Bank Presidential Lecture, Washington D.C, 3 December 2001)

³⁸ DfiD, 'Realising Human Rights for Poor People' (Target Strategy Paper 2000) 7
<http://www2.ohchr.org/english/issues/development/docs/human_rights_tsp.pdf> accessed 17 March 2017.

required to take steps - for example through legislation, policies and programmes - whose purpose is to respect, promote and fulfil human rights of all people within their jurisdiction. - (Sida 2002).³⁹

A rights-based approach deliberately and explicitly focuses on people achieving the minimum conditions for living with dignity. It does so by exposing the root causes of vulnerability and marginalisation and expanding the range of responses. It empowers people to claim and exercise their rights and fulfil their responsibilities. A rights-based approach recognises poor people as having inherent rights essential to livelihood and security - rights that are validated by international standards and laws. - CARE 2000).⁴⁰

As noted above, the rights-based approach has been applied to a wide range of development issues.⁴¹ Its underlying principles have been significant in reconceptualising such issues and how they are approached within the broader discourse and practice of development. Its application to the subject of governance provides the second of the factors that constitute the background to the rights-based approach to anticorruption. This is considered next.

³⁹ Sida, *Perspectives on Poverty* (Policy Department Stockholm 2002) 34.

⁴⁰ CARE, *Promoting Rights and Responsibilities* (Newsletter, October 2000) 38.

⁴¹ HRBA Portal (n 15).

7.1.2 'Good Fit' Approaches to Governance

As discussed in section 5.5.2 of chapter five, a major criticism of the global anticorruption agenda is its emphasis on a generic top-down institutional approach to dealing with corruption. The criticism involves the argument that anticorruption efforts and governance reforms generally are often 'supply' driven with IDIs, CSOs and experts prescribing 'best practice' models for governance for countries in the global South.⁴² In the light of the negligible results achieved thus by anticorruption efforts, a growing amount of research and initiatives have surfaced since the turn of the century advocating an alternative approach to dealing with corruption and achieving good governance.

The central idea behind this alternative approach is that governance and anticorruption efforts should be bottom-up, fitting the 'demand-side' necessities of individual countries and contexts, instead of a general model of good governance being implemented everywhere.⁴³ Hence, there is advocated a shift from 'best practice' to 'good fit'.⁴⁴ It is worth noting however that, within this broad consensus, this approach

⁴² See Francis Fukuyama, *State-Building: Governance and the World Order in the 21st Century* (Cornell University Press 2004); Peter Evans, 'Development as Institutional Change: The Pitfalls of Monocropping and the Potentials of Deliberation' (2004) 38(4) *Studies in Comparative International Development* 30-52; Brian Levy, 'Governance and Economic Development in Africa: Meeting the Challenge of Capacity Building' in Brian Levy and Sahr John Kpundeh (eds), *Building State Capacity in Africa: New Approaches, Emerging Lessons* (World Bank 2004) 1-42

⁴³ Centre for the Future State, *An Upside-Down View of Governance* (Institute of Development Studies 2010) 1-14; Sue Unsworth, 'What's Politics Got to Do with It? Why Donors Find It So Hard to Come to Terms with Politics, and Why This Matters' (2009) 21(6) *Journal of International Development* 883-894.

⁴⁴ Richard C. Crook and David Booth (eds), 'Working with the Grain? Rethinking Africa Governance' (2011) 42(2) *IDS Bulletin* 1-10; David Booth, 'Governance for Development in Africa: Building on What Works' (2011) *Africa Power and Politics Programme Policy Brief* 01 <<http://www.institutions-africa.org/filestream/20110406-appp-policy-brief-01-governance-for-development-in-africa-building-on-what-works-by-david-booth-april-2011>> accessed 17 March 2017. Whilst it is difficult to trace the foremost usage of the term 'good fit', the idea that governance should move away from concepts of 'universal best practice' to context-specific local solutions can be found in the works of scholars like Merilee Grindle, Brian Levy, Dani Rodrik, Sue Unsworth and Mick Moore. The contributions of some of these scholars are considered later in this section. However, a comprehensive discussion of the idea of 'good fit' approaches to governance can be found in the work

has been conceptualised and implemented in different ways, reflecting varying emphases on how the approach should proceed. A number of these are examined below to demonstrate their influence on the conception of the rights-based approach.

An interesting point to start, owing to the obvious irony, is a publication by the World Bank in 2008 covering conceptual analysis and case studies on bottom-up contextual challenges and solutions in governance. Titled *Governance Reform Under Real-World Conditions*, and in contrast to the Bank's emphasis on institutions in issues of governance, the book accentuated the importance of consensus-building, informal networks, dialogue and negotiation in dealing with governance issues. This was done under the three broad categorisations of citizens, stakeholders and voice.⁴⁵ The significance of this work lies in its acknowledgment of the fact that governance reforms, especially those promoted by the Bank, were out of touch with 'real-world conditions' in the context of their implementation and therefore required local input.⁴⁶

Apart from this, it did not presuppose any drastic change in policy from the perspective of the Bank; and such change did not take place in any case. The Bank's anticorruption strategy has always focused on the central role of building and strengthening institutions with a supporting role for civil society.⁴⁷ To the extent that much of the work captured civil society as representative of citizen action and voice, it

of David Booth and his colleagues at the Africa Power and Politics Programme. The discussion of the concept in this thesis is built on this work.

⁴⁵ Sina Odugbemi and Thomas Jacobson (eds), *Governance Reform Under Real-World Conditions: Citizens, Stakeholders and Voice* (World Bank 2008).

⁴⁶ In this respect, this work built on an earlier publication sponsored by the Bank which examined lessons learnt and new approaches to governance in Africa. See Brian Levy and Sahr John Kpundeh (eds), *Building State Capacity in Africa: New Approaches, Emerging Lessons* (World Bank 2004)

⁴⁷ World Bank, *Helping Countries Combat Corruption: The Role of the World Bank* (PREM, September 1997) 44-6. Civil society within the Bank's original anticorruption strategy was mainly expected to play the role of creating and maintaining an atmosphere that discourages fraud and corruption in public life by acting as watchdogs.

is at best a recognition of an extended role for civil society in anticorruption efforts and does not go as far as other works examined hence.

In equally less than drastic measure, Brian Levy considered good fit strategies as essentially requiring development and governance strategies to be sensitive, not just to the peculiar context of countries but also to their stage of development. Referring to this approach as 'working with the grain', he made a case for the jettisoning of one-size-fits-all best-practice prescriptions in recognition of the uniqueness of every country.⁴⁸ Hence governance reforms should look to 'getting the fit right' by adopting a multi-stakeholder approach that takes into consideration existing institutional arrangements that are interdependent and mutually supportive.⁴⁹

Whist recognising its role, Levy did not lay specific emphasis on civil society in his work. This is in stark contrast to Pierre Landell-Mills' conception of good fit approaches to dealing with corruption. In his work *Citizens Against Corruption*, Mills puts civil society at the centre of bottom-up citizen-led action against corruption.⁵⁰ The book captures the experiences of over 200 case studies involving civil society action in 53 countries under the Partnership for Transparency Fund.⁵¹ It iterates the massive impact of citizen action against corruption.⁵² This is both in terms of holding state

⁴⁸ Brian Levy, *Working with the Grain: Integrating Governance and Growth in Development Strategies* (OUP 2014) 203-207.

⁴⁹ *ibid* 179-202. David Booth also built on this idea of working with the grain which he conceptualised in less figurative form as 'building on what works.' See David Booth, 'Introduction: Working with the Grains? Africa Power and Politics Programme' in Richard Crook and David Booth (eds), 'Working with the Grain? Rethinking African Governance' (2011) 42(2) IDS Bulletin 1-10.

⁵⁰ Pierre Landell-Mills, *Citizens Action Against Corruption: Report from the Front Line* (Partnership for Transparency Fund 2013)

⁵¹ Established in 2000, the PTF describes itself as a pioneering innovative organisation that mobilises expertise and resources to provide advice and small grants to CSOs that engage citizens in actions to improve governance, increase transparency and reduce corruption in developing countries. See Partnership for Transparency Fund <<https://ptfund.org/about-2/>> accessed 19 March 2017.

⁵² One of the major success stories recorded by Landell-Mills was that of the Development Alternatives and Resources Centre, a local CSO in Cross River State, Nigeria. The CSO developed a project aimed at increasing transparency and accountability of the state's procurement system, and with a grant of US\$40,000 from the Partnership for Transparency Fund, the project was estimated to

institutions and public officials accountable, and proposing and implementing new ways of ensuring good governance.

There are two more perspectives on this that take a broader and more radical view of the 'post-supply side' approach to governance. Firstly, Merilee Grindle, who referred to this approach as 'going local' looked at emerging citizen-driven patterns of municipal administrations such as town hall meetings as demonstrations of good fit governance approaches.⁵³ Whilst also recognising the role of civil society in extracting benefits and demanding accountability,⁵⁴ she saw these approaches as more pragmatic options for attaining the promise of good governance, especially at the local government level. The second work arose from a five-year research project commissioned by the United Kingdom's Overseas Development Institute. The *Africa Power and Politics Programme (APPP)* admits that it broadly falls into the category of new thinking on bottom-up good fit approaches to governance which condemns governance reforms based on 'Northern best practices' that emphasise the role of institutions.⁵⁵ It also proceeded on the premise that improvements in governance should start 'from [the] country reality and how to improve it, not from the donor's ideals or preconceptions.'⁵⁶ However, the synthesis report on the project, authored by David Booth, points out a number of salient ways in which it differs from other works in this area and pushes the concept of good fit governance into new frontiers.

have yielded an estimated US\$2.7 million in savings in its first nine months of operations. See Landell-Mills (n 50) 159-162.

⁵³ Merilee S. Grindle, *Going Local: Decentralisation, Democratisation and the Promise of Good Governance* (Princeton University Press 2007) 106-123.

⁵⁴ *ibid* 124-144.

⁵⁵ David Booth, 'Development as a Collective Action Problem: Addressing the Real Challenges of African Governance' (October 2012) Africa Power and Politics Programme Policy Brief 09 <<http://www.institutions-africa.org/filestream/20121024-appp-policy-brief-09-development-as-a-collective-action-problem>> accessed 17 March 2017.

⁵⁶ David Booth, *Development as a Collective Action Problem: Addressing the Real Challenges of African Governance* (Overseas Development Institute 2012) 7.

In the first instance, Booth notes that current conceptions of good fit approaches tend to emphasise a simple contrast between top-down supply-side reforms based on institutions and bottom-up demand-side reforms built on the premise of stimulating demand for good governance through civil society and related mechanisms.⁵⁷ In the bigger picture however, he observes that the actual practice of IDIs and country reformers has changed little. Development assistance policies are still based on financial transfers and the provision of technical assistance.⁵⁸ Fundamental presumptions that underlie governance reforms such as the belief that governance challenges are about one set of people getting another set of people to behave better have also endured.⁵⁹ So also is the belief that assistance should be provided to stimulate and strengthen 'latent' commitment of certain institutions and individuals in the global South to improving governance and addressing corruption. The report argues that the only difference is that all these are now directed towards a different set of actors, such that 'the so-called demand-side approach simply turns the supply-side approach on its head'.⁶⁰ Echoing views expressed earlier by Merilee Grindle,⁶¹ the report therefore argues that more needs to be done to spell out the practical implications of the good fit approach and what exactly development agencies and country reformers should be doing differently.

In response to this need, the APPP proposes a move from good fit to what Booth refers to as 'best fit'.⁶² To achieve this, governance reforms must reach beyond the metaphor of supply and demand and see governance as being 'fundamentally about both sets

⁵⁷ *ibid* 8.

⁵⁸ *ibid* 7.

⁵⁹ *ibid* 11.

⁶⁰ *ibid* 10.

⁶¹ Merilee S. Grindle, 'Governance Reform: The New Analytics of Next Steps' (2011) 24(3) *Governance* 415-418.

⁶² David Booth, *Development as a Collective Action Problem: Addressing the Real Challenges of African Governance* (n 56) 95.

of people finding ways to act collectively in their own best interests'.⁶³ This challenge of applying collective action for governance requires detailed knowledge of contextual situations and solutions. It further requires arriving at 'practical hybrid' solutions resulting from conscious efforts by elements of the modern state to adapt to local cultural preferences.⁶⁴ This might entail relying on governments that implement 'second-best' policy measures in terms of conventional governance conceptions,⁶⁵ but are economically active and capable of galvanising and integrating local support to provide practical solutions to governance challenges.⁶⁶ The work notes that such context-specific hybrid solutions are necessary to overcome institutional blockages between government and citizens in pursuing good governance. And due to the exceptional local knowledge required to arrive at such solutions, it may well require more 'arm's length' dealings between external actors and those on both the demand and supply sides of the equation at the local level.⁶⁷

It is worth noting that beyond the above few conceptual differences, the fundamental idea being advanced is that governance reforms should be more context-specific and integrate bottom-up approaches. This concept has enjoyed much popularity since the turn of the century. Good governance and anticorruption projects built based on this approach include the Partnership for Transparency Fund referred to above,⁶⁸ the

⁶³ *ibid* viii.

⁶⁴ *ibid* xi.

⁶⁵ On the practicalities and prospects of governance reforms that may technically be considered 'second best', see Dani Rodrik, 'Second-Best Institutions' (2008) 98(2) *American Economic Review* 100-104.

⁶⁶ *ibid* 28.

⁶⁷ *ibid* 95.

⁶⁸ Partnership for Transparency Fund (n 51).

International Budget Partnership,⁶⁹ a few projects examined by the APPP,⁷⁰ the Development Leadership Programme⁷¹ and certain projects of Oxfam on governance and accountability.⁷²

However, as recognised by proponents of this approach themselves, the firm foundations of the extant top-down governance agenda mean that it will be difficult to ‘turn the ship around’, and align it with this approach.⁷³ It is almost impossible to pull down and reverse the institutional arrangements established in various countries, based on long-standing practices in governance reforms. Changing the ideologies, culture and institutional formulae of IDIs, CSOs and other stakeholders would also prove a difficult challenge.

This leaves the question of the place of the emerging bottom-up good fit approaches in addressing corruption. Are they expected to merely complement the current top-down institutional approach or are there prospects for them to supplement the current agenda over time? In what practical ways can they improve on the current approach? The answers to these questions are dependent on a number of factors regarding, in particular, the conception of the RBAA, its benefits and the approach to its implementation. These issues are considered below.

⁶⁹ The International Budget Partnership collaborates with civil society globally to use budget analysis and advocacy as tools to improve effective governance and reduce poverty. See International Budget Partnership <<http://www.internationalbudget.org/who-we-are/>> accessed 17 March 2017.

⁷⁰ See Richard Crook and David Booth (eds), ‘Working with the Grain? Rethinking African Governance’ (2011) 42(2) IDS Bulletin.

⁷¹ The Development Leadership Programme is an international research initiative that explores how leadership, power and political processes drive or block successful development. Its work is built on, amongst others, the proposition that coalitions (formal and informal) are the key political mechanisms that can resolve collective action problems are often based on prior networks. See Development Leadership Programme <<http://www.dlprog.org/about-us.php>> accessed 17 March 2017.

⁷² Duncan Green, ‘How Can Aid Agencies Promote Local Governance and Accountability? Lessons from Five Countries’ (*From Poverty to Power*, 31 May 2012) <<http://www.oxfamblogs.org/fp2p/?p=10309>> accessed 17 March 2017.

⁷³ David Booth, *Development as a Collective Action Problem: Addressing the Real Challenges of African Governance* (n 56) 95.

7.2 What the Rights-Based Approach to Anticorruption Entails.

Simply, the RBAA entails the application of the principles of rights-based development and bottom-up context-specific governance in dealing with corruption. The approach is therefore composite in the sense that it can be used to describe a broad range of approaches - policies, practices, initiatives - built on these principles. The Office of the United Nations High Commissioner for Human Rights (OHCHR) grasped the general essence of the approach in the following passage:

*A human rights-based approach to anti-corruption means putting the international human rights entitlements and claims of the people (the 'right-holders') and the corresponding obligations of the State (the 'duty-bearer') in the centre of the anti-corruption debate and efforts at all levels, and integrating international human rights principles including non-discrimination and equality, participation and inclusion, accountability, transparency and the rule of law.*⁷⁴

In the first instance therefore, the RBAA considers corruption and the response to it within the literal framework of rights violation and remediation. This conception is based on drawing a link between acts of corruption and human rights violations. Hence, the fact that corruption negatively impacts on human rights⁷⁵ is used as a

⁷⁴ OHCHR, *The Human Rights Case Against Corruption* (UN, Geneva November 2013) 5.

⁷⁵ The nature and ways in which corruption may impact human rights is discussed in section 2.6 of chapter 2.

premise for the use of human rights in addressing corruption. Proponents of this view see it as being essentially about providing remedies for the violation of human rights arising from corruption.⁷⁶ This is usually through rights-based litigation but also encompasses other general mechanisms for providing remedies to victims of rights violations.⁷⁷

In accordance with this view of the RBAA, Carmona and Bacio-Terracino, having shown how corruption is linked to specific human rights ranging from civil and political to socio-economic rights, concluded that:

*A clear understanding of the practical connections between acts of corruption and human rights may empower those who have legitimate claims to demand their rights in relation to corruption, and may assist States and other public authorities to respect, protect and fulfil their human rights responsibilities at every level Connecting acts of corruption to violations of human rights also creates new possibilities for action, especially if acts of corruption can be challenged using the different national, regional and international mechanisms that exist to monitor compliance with human rights.*⁷⁸

⁷⁶ David Nelken, 'Corruption and Human Rights: An Afterword' in Martine Boersma and Hans Nelen (eds.) *Corruption & Human Rights: Interdisciplinary Perspectives* (Intersentia 2010) 241, 251.

⁷⁷ International Council on Human Rights Policy (ICHRP), *Corruption and Human Rights: Making the Connection* (ICHRP, Switzerland 2009) 5-6. Such other mechanisms include the use of mechanisms under the UN and regional human rights systems including special procedures, universal periodic review, treaty bodies, human rights commissions and such other instruments that become available once there is a violation of human rights. At the local level, this entails national human rights institutions, courts, CSOs and related mechanisms considering issues of corruption in their work on human rights.

⁷⁸ Magdalena Sepúlveda Carmona and Julio Bacio-Terracino, 'Corruption and Human Rights: Making the Connection' in Martine Boersma and Hans Nelen (eds.) *Corruption & Human Rights: Interdisciplinary Perspectives* (Intersentia 2010) 47-48.

This is a perspective also shared by Olaniyan.⁷⁹ He advocated for the rights-based approach as an alternative to current national and international frameworks for dealing with corruption in Africa. His work examined how corruption negatively impacts the various rights contained in the African Charter on Human and Peoples' Rights and other human rights instruments.⁸⁰ With a clear focus on litigation, the work considered legal, procedural, substantive and practical challenges that may be faced by victims of corruption seeking redress for the violation of their rights in court.⁸¹

On his part, Raj Kumar goes further by conceptualising the rights-based approach beyond just empowering people to seek remedies for the breach of their rights. He makes the case for a 'fundamental right to corruption-free governance'.⁸² Kumar's work links the formulation and recognition of such a right with the elimination of corruption and the promotion of integrity and good governance. In doing so, he approached the responsibility of government to ensure corruption-free governance as a part of the rights of its people to live meaningful lives under a government free of corruption.⁸³ Hence, the commitment of government and public officials to conduct the affairs of state in a manner that is transparent and accountable is removed from the domain of mere public policy objective or political statement to a rights conceptualisation with attendant outcomes: the people as 'rights-holders' and the government as 'duty-bearers'.⁸⁴ Kumar's work does not however expound on the content of such a right beyond the extant understanding of the inherent benefits of

⁷⁹ Kolawole Olaniyan, *Corruption and Human Rights Law in Africa* (Hart Publishing 2014).

⁸⁰ *ibid* 193-272.

⁸¹ *ibid* 315-341.

⁸² C. Raj Kumar, 'Corruption, Development and Good Governance: Challenges for Promoting Access to Justice in Asia' (2008) *Michigan State Journal of International Law* 475, 550.

⁸³ *ibid* 550-551.

⁸⁴ C. Raj Kumar, 'Corruption in India: A Violation of Human Rights; Promoting Transparency and the Right to Good Governance' (2015) 49(2) *UC Davis Law Review* 741, 745.

considering corruption as a violation of human rights and its legal and governance implications.

Secondly and at a more comprehensive level, the RBAA goes beyond such a simplistic rights violation and remediation framework. Nor is it just about rights-based litigation. It involves the application of human rights principles and utilisation of mechanisms built for the protection of human rights in anticorruption efforts. Admittedly, the use of such principles and mechanisms will be based on rights violations arising from corruption in some cases. Yet, the lack of such violations does not *ipso facto* preclude the application of the RBAA. This is because the principles on which the approach is founded - focus on people, empowerment, participation, transparency and accountability, etc - are integral elements of current development policy and practice which are being extended to the domain of anticorruption. As discussed above, these principles underlie the rights-based approach to development and the emergence of good fit approaches to governance. The RBAA can therefore be considered an almost inevitable outcome of the progression of anticorruptionism alongside general development policy towards a focus on human development and human rights. And it is based on this broader conception of the RBAA that this work proceeds.

7.3 Rationalising the Rights-Based Approach to Anticorruption

This section considers the justifications of the approach. It examines the arguments in favour of the RBAA and the ways in which it can improve on current anticorruption

efforts. In doing this, it explores the question of whether the approach will provide answers and solutions to the questions and problems that affect current anticorruption efforts as examined in the preceding chapters of this work. The discussion that follows looks at four ways in which the RBAA adds value to efforts to curb corruption.

7.3.1 More Comprehensive Approach to the Obligation of the State to Address Corruption

A hallmark of current efforts to curb corruption is the adoption of a criminal perspective.⁸⁵ Corruption is largely seen as a crime and in accordance with the general principles of criminal law, the State assumes the primary responsibility of prosecuting those who engage in corruption. This entails prevention, identifying and investigating perpetrators of such crimes, sanctioning perpetrators and cooperating with stakeholders at the international and local levels throughout such processes.⁸⁶ This approach has been criticised for being parochial and not appreciating the multidimensional nature and impact of corruption. It is in this respect that the RBAA provides a comprehensive and more pragmatic understanding of the effects of corruption, especially its social implications and human dimensions.

This understanding provides a broader perspective on the obligation of the state to tackle corruption that goes beyond the approach of criminalisation. It promotes looking at the obligation of the state in accordance with the three core levels of responsibility which the state bears in relation to human rights. These are the duty to respect, protect

⁸⁵ UNHRC, 'Final Report of Human Rights Council Advisory Committee on the Issue of the Negative Impact of Corruption on the Enjoyment of Human Rights' (28th Session, 5 January 2015) A/HRC/28/73, 9.

⁸⁶ *ibid.*

and fulfil.⁸⁷ In the light of the link between corruption and human rights, the state would be required take a wider range of actions as envisaged by these duties in addressing corruption. Whilst certain actions currently undertaken by the state may satisfy some of these obligations, the application of this framework would provide an extended view of state action on anticorruption.

Thus, actions in terms of ‘respecting’ human rights would require the state to put in place mechanisms to prevent corruption, and also to refrain from corrupt activities that interfere with the enjoyment of human rights by citizens.⁸⁸ The obligation to ‘protect’ warrants the state ensuring that citizens do not suffer from corruption perpetrated by third parties such as private corporations.⁸⁹ Where such corruption takes place, the state also has to ensure that victims are provided access to effective remedies.⁹⁰ The obligation to ‘fulfil’ human rights would require the state to take affirmative steps in establishing institutions and mechanisms for good governance in its administration of the State in such a manner that guarantees citizens the realisation of their human rights.⁹¹

⁸⁷ Manisuli Ssenyonjo, *Economic, Social and Cultural Rights in International Law* (Hart Publishing 2009) 23-26. See also the case of *Social and Economic rights Action Centre (SERAC) & Anor v Nigeria* (2001) AHRLR 60.

⁸⁸ Actions to refrain from in this respect include rigging of elections through bribery that has the effect of violating the political rights of citizens and embezzlement of public funds meant for the building and maintenance of schools and hospitals essential for the enjoyment of socio-economic rights.

⁸⁹ Dinah Shelton, ‘Human Rights and the Environment: What Specific Environmental Rights Have Been Recognised?’ (2008) 35(1) *Denver Journal of International Law and Policy* 129, 130.

⁹⁰ Practical actions in this regard would include employing legislative and other measures to punish private corporations and individuals who engage in bribery or other corrupt activities that lead directly or indirectly to rights violations. Other actions may involve initiating anticorruption campaigns for sensitising citizens and providing them with tools and media for reporting corruption and holding individuals and private entities accountable.

⁹¹ Actions that states may take in this regard comprise putting in place initiatives which are already part of the current regime of anticorruption like establishing public procurement institutions and processes, but more generally positive actions that establish transparent and accountable governance that guarantee citizens a meaningful life.

Even though this argument for the RBAA appears quite conceptual, it is significant when considered against the other advantages of the approach discussed below. This is because, whilst much of the case for the RBAA focuses on what it adds to bottom-up responses to corruption, the proposition in this section shows that the approach also has positive ramifications for current top-down approaches. The broader conception of the obligation of the state in tackling corruption which the RBAA engenders can prove pivotal in influencing how anticorruption institutions set their policies and approach their work. It can also provide a more comprehensive parameter for civil society and the media to assess the anticorruption efforts of the state; a parameter that takes into consideration the diverse nature of corruption and its impact on development.

7.3.2 Leveraging on Shared Principles Between Anti-Corruption and Human Rights

A rights-based understanding of anticorruption diminishes opportunities for corruption by requiring compliance with certain principles that are significant for the enjoyment of human rights.

The discourse on the integration of a RBAA often refers to the premise that the protection of human rights and anticorruption efforts are mutually reinforcing.⁹² As established earlier in this work, all forms of corruption tend to directly or indirectly violate human rights. In the same vein, the lack of protection of human rights is likely

⁹² International Council on Human Rights Policy (ICHRP) and Transparency International (TI), *Integrating Human Rights in the Anti-Corruption Agenda: Challenges, Possibilities and Opportunities* (ICHRP, Switzerland 2010) vii.

to allow corruption to thrive. Hence, the efforts to tackle corruption and efforts to protect and promote human rights are likely to have an obvious mutually reinforcing effect.

This effect is underscored by the understanding that human rights principally address abuse of power and corruption is essentially defined in terms of the immoral, illegal or otherwise wrongful abuse of power.⁹³ Furthermore, state capture by entrenched corrupt interests leads to pervasive abuse of public power in ways that make access to education, health and other social services and benefits restrictive and discriminatory. In this way, corruption sustains exploitation and social exclusion of disadvantaged individuals and groups, thereby impacting on the enjoyment of their rights.⁹⁴ To the extent that corruption reinforces wrongs in society which human rights seek to protect against, it becomes obvious that curbing corruption would invigorate processes established for the protection of human rights. Consequently, the adoption of a RBAA highlights principles whose application are simultaneously beneficial for attaining the goals of enjoying human rights and curbing corruption.⁹⁵ Commenting on the importance of this, the OHCHR noted that:

“An efficient anticorruption strategy must be informed by key human rights principles. An independent judiciary, freedom of the press, freedom of expression, access to information transparency in the political system, and accountability are essential for both successful anticorruption strategies and the enjoyment of human rights In

⁹³ *ibid* viii.

⁹⁴ *ibid*.

⁹⁵ Gareth Sweeney, ‘Linking Acts of Corruption with Specific Human Rights’ in European Union, *Corruption and Human Rights in Third Countries* (European Union, Brussels 2013) 10.

*promoting these basic elements of good governance, human rights and anticorruption efforts can be mutually reinforcing*⁹⁶

The mutually reinforcing nature of the shared principles between anticorruption and human rights has clear practical implications. Firstly, efforts to tackle corruption would generally be enhanced in a country with a strong regime for the protection of rights. The preservation of rights such as freedom of expression, non-discrimination, freedom of assembly, access to information, freedom of the media and the right to a fair trial are all essential to addressing corruption. This encompasses the prevention, investigation and punishment of corruption. It applies also to the provision of remedies for victims of corruption. People are more likely to stand up against corruption, seek information and justifications for governance decisions and engage in actions like whistleblowing in a country with a good human rights regime.

However, the argument here goes beyond just the impact of the exercise of particular human rights on anticorruption efforts. It looks at broader principles that underlie human rights generally, and have parallels with and will therefore benefit anticorruption efforts. Three of these principles are considered in this section. These are the principles of participation, transparency and access to information, and accountability. The value of integrating these principles is that, even though they are common to both anticorruption efforts and human rights principles, the way they are conceptualised and operationalised in both disciplines is different.⁹⁷ As the discussion below will

⁹⁶ OHCHR *The Human Rights Case Against Corruption* (n 74) 5.

⁹⁷ *ibid* 1.

show, their application within a human rights framework is more robust and impactful, and will therefore enhance anticorruption efforts through a RBAA.

7.3.2.1 *The Principle of Participation*

The principle of participation is integral to rights-based approaches to development.⁹⁸ It is also a condition upon which the realisation of most rights is based.⁹⁹ Efforts to confront and hold authorities accountable - which human rights enables - cannot be possible without participation.¹⁰⁰ Rights such as freedom of expression, freedom of association, the right to peaceful assembly and the right to take part in the conduct of public affairs¹⁰¹ are all directly or indirectly geared towards ensuring effective participation of people in public life, especially in decisions and processes that affect them. International instruments focused on specific groups in society including the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW),¹⁰² the Convention on the Rights of the Child (CRC),¹⁰³ and the Convention on the Rights of Persons with Disabilities (CRPD),¹⁰⁴ make specific provision for the participation of members of such groups in political, public and cultural life. The

⁹⁸ Lisa VeneKlasen, Valerie Miller, Cindy Clark and Molly Reilly, 'Rights-Based Approaches and Beyond: Challenges of Linking Rights and Participation' (2004) IDS Working Paper 235, 5-6 <<https://www.ids.ac.uk/files/Wp235.pdf>> accessed 3 April 2017.

⁹⁹ United Nations Population Fund, 'Human Rights Principles' (2005) <<http://www.unfpa.org/resources/human-rights-principles>> accessed 3 April 2017.

¹⁰⁰ ICHRP and TI (n 92) 4-5.

¹⁰¹ See Articles 19-25, International Covenant on Civil and Political Rights (ICCPR); Articles 9-13, African Charter on Human and Peoples' Rights (ACHPR).

¹⁰² Articles 7 & 8, CEDAW (adopted 18 December 1979, entered into force 3 September 1981) 1249 UNTS 13.

¹⁰³ Articles 13, 15 & 31, CRC (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3.

¹⁰⁴ Articles 29 & 30, CRPD (adopted 13 December 2006, entered into force 3 May 2008) UN Doc A/RES/61/106.

importance of participation was highlighted in Article 1 of the Declaration on the Right to Development which provides that:

*The right to development is an inalienable human right by virtue of which every human person and all peoples are entitled to **participate in, contribute to** and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realised.*¹⁰⁵

The effectiveness of participation is often judged by the twin dimensions of breadth and depth.¹⁰⁶ The breadth of participation applies to the range of persons involved. It requires that all those affected by actions and decisions be involved in the processes leading to them.¹⁰⁷ A genuinely inclusive process therefore entails identifying all potential participants and removing possible obstacles to their participation. This is particularly important for vulnerable and disadvantaged groups like the uneducated, the young and the disabled who would otherwise be unable to participate meaningfully.¹⁰⁸ Actions in this respect would include providing relevant and timely information about governance policies and processes to all persons and groups concerned. In doing so, assistance should be given, where required, to those who

¹⁰⁵ Emphasis added. See also Article 2(1) of the Declaration which states that [T]he human person is the central subject of development and should be the active participant and beneficiary of the right to development.

¹⁰⁶ Jeffrey M. Berry, Kent E. Portney and Ken Thompson, *The Rebirth of Urban Democracy* (The Brookings Institution 1993) 54-57. See also Benjamin R. Barber, *Strong Democracy: Participatory Politics for a New Age* (University of California Press 1984) 173-98; Robert A. Dahl, *A Preface to Democratic Theory* (University of Chicago Press 1956) 63-89.

¹⁰⁷ ICHRP and TI (n 92) 6-8.

¹⁰⁸ UN Committee on Economic, Social and Cultural Rights, 'General Comment No. 14, The Right to the Highest Attainable Standard of Health' (12 May 2000) paras. 11, 17 and 54; UN Human Rights Committee, *Ilmari Lansman v Finland* (24 October 1994) CCPR/C/52/D/511/1992. para 9.5.

require same to access and understand such information, and to participate fully without cultural, educational, linguistic, geographical or economic obstacles.

The depth of participation is measured by how meaningful rights-bearers can exert influence on the decision-making processes that affect them. It considers the mechanics of the process of participation and requires that participants be directly involved in determining outcomes and decisions.¹⁰⁹ This goes beyond superficial participatory processes aimed at gathering and exchanging information, assessing local opinion, identifying interests and taking advantage of local knowledge.¹¹⁰ Deep participation envisages a process that fosters critical consciousness and a 'mutual decision-making process, where different power actors share and set agendas jointly'.¹¹¹

Applying this rights-based framework of participation in anticorruption will serve to improve the current conception and implementation of participation in addressing corruption. Participation is already a central component of the current anticorruption regime. Article 13 of UNCAC for instance, requires states to take appropriate measures to promote the active participation of individuals and groups outside the public sector in anticorruption efforts. The World Bank and other IDIs also recognise the role of civil society in their strategies to curb corruption.¹¹² However, participation is often seen as a way of contributing to policy to improve project performance, holding

¹⁰⁹ Berry, Portney and Thompson (n 106) 56.

¹¹⁰ ICHRP and TI (n 92) 9.

¹¹¹ VeneKlasen, et al. (n 98) 5.

¹¹² Marie Chêne and Gillian Dell, 'UNCAC and the Participation of NGOs in the Fight Against Corruption' (2008) U4 Expert Answer <<http://www.u4.no/publications/uncac-and-the-participation-of-ngos-in-the-fight-against-corruption/>> accessed 3 April 2017; UNDP, *A Guide to Civil Society Organisations Working on Democratic Governance* (UNDP 2005); World Bank, *Helping Countries Combat Corruption: The Role of the Bank* (PREM 1997) 44-5

state institutions accountable in their anticorruption efforts or assisting in such efforts, rather than a way for citizens to deal with corruption themselves. Hence, practical roles in terms of participation often include contributing to the design, implementation and review of anticorruption policies and projects, engaging in civic education against corruption and serving as a watchdog for governance efforts generally, and the performance of state anticorruption institutions particularly.¹¹³

The application of a rights-based approach in the area of participation will go beyond such oversight functions to ensuring that participation is meaningful both in terms of breadth and depth. The most important demonstration of this is that those affected by corruption will be practically involved in acting against corruption, rather than depending on top-down approaches or just contributing to processes whose outcomes are ultimately out of their control.

7.3.2.2 *The Principle of Transparency and Access to Information*

Having effective access to information is a prerequisite for the enjoyment of human rights. Citizens are better placed to enjoy their rights when they have access to up-to-date and comprehensive information, understand their entitlements and have the opportunity and capacity to use the information.¹¹⁴ Also, the operation of fundamental human rights principles like participation depends on having access to information. The right to 'seek' and 'receive' information is directly recognised under certain

¹¹³ See Article 13(2), UNCAC; Article 12, African Convention on Preventing and Combating Corruption.

¹¹⁴ Maeve McDonagh, 'The Right to Information in International Human Rights Law' (2013) 13(1) Human Rights Law Review 25-55.

international human rights instruments such as Article 9 of the African Charter on Human and Peoples' Rights which provides that 'every individual shall have the right to receive information'.

However, in most cases, this right is considered an integral element of the right to freedom of expression.¹¹⁵ Article 19 (2) of the International Covenant on Civil and Political Rights provides for instance that:

*Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice*¹¹⁶

In 2006, the Inter-American Court of Human Rights, in interpreting a similar provision in Article 13 of the American Convention on Human Rights, held that the right to freedom of thought and expression includes the protection of the right of access to state-held information. As such, the right to request and receive information may not be hindered or refused in any way.¹¹⁷ The court further noted that the right to freedom of expression cannot be considered fully respected where the right to information is not recognised.¹¹⁸

¹¹⁵ Päivi Tiilikka, 'Access to Information as a Human Right in the Case Law of the European Court of Human Rights' (2013) 5(1) Journal of Media Law 79-103.

¹¹⁶ See also Article 13 of the American Convention on Human Rights 1969, 1144 UNTS 123; Article 10 of the European Convention on Human Rights and Fundamental Freedoms 1950, ETS 5.

¹¹⁷ *Claude Reyes et al. v. Chile*, Case No. 12.108 (19 September 2006) <http://www.right2info.org/resources/publications/case-pdfs/iachr_claude-reyes-v.-chile_eng> accessed 3 April 2017.

¹¹⁸ *ibid.* See also the decision of the African Commission on Human and Peoples' Rights in *Sir Dawda K. Jawara v. The Gambia*, Communication 147/95 (11 May 2000). The Commission in interpreting Article 9 of the Charter referred to above, held that the intimidation of journalists was not

Even through the term ‘transparency’ - understood as the degree to which governments and individuals openly disclose information, rules, plans, processes and actions¹¹⁹ - does not appear in international human rights instruments, its relevance is implicit in the content of the right to freedom of expression and the right of access to information. The essential elements of the principle of transparency underlie and enable the enjoyment of these rights.

Irrespective of the sector or issue, transparency is a mainstay of most anticorruption strategies and governance programmes. In similar vein, access to information is integral to transparency as it enables anticorruption agencies, auditors, judges, parliamentarians, civil society, and citizens to have timely and accurate information necessary to evaluate public decisions and actions. Hence, Article 10 of UNCAC requires state parties to enhance transparency in public administration and to adopt procedures and regulations that allow the public to obtain, in appropriate circumstances, information on the organisation, functioning and decision-making processes of its public administration.

This is one area where anticorruption and human rights efforts have leveraged on shared principles and objectives to good effect. The most obvious demonstration of this is the emergence of and progress made with respect to the right of access to information. As of February 2014, at least 99 countries had freedom of information

only a violation of their right to freedom of expression but also deprives the public of their right to information.

¹¹⁹ Transparency International, *The Anti-Corruption Plain Language Guide* (TI 2009) 44.

legislation or related provisions in force.¹²⁰ In SSA, twelve countries - Angola, Ethiopia, Guinea, Ivory Coast, Liberia, Niger, Nigeria, Rwanda, Sierra Leone, South Africa, Tunisia and Uganda - have access to information provisions in their national law.¹²¹ The small number of countries with such laws and the slow progress in the enforcement and respect for this right means that a lot still needs to be done in this respect in the region.

Progress must take place beyond the formal passage of these laws to an understanding of the role of information as a recognised form of power in society. Transparency reforms have the potential to impact power relations and to that extent the distribution of resources and enjoyment of rights.¹²² This provides incentive for powerful state and private actors to hinder access to public information or at least influence information that is disseminated, where access is provided. It is in this context that the extension of the application of human rights principles in this area can enhance transparency for anticorruption efforts.

Firstly, the application of human rights principles such as non-discrimination can ensure that access to information is not restricted to certain groups like the highly educated or formal CSOs.¹²³ Instead it will ensure that access is also granted to vulnerable and disadvantaged groups who might otherwise be unable to seek, receive or make use of information. Actions to ensure this might include the organisation of

¹²⁰ For detailed information on countries with such laws showing their regional spread, see the Right2Info website <<http://www.right2info.org/access-to-information-laws#section-2>> accessed 3 April 2017.

¹²¹ *ibid.* It is worth noting that Zimbabwe has a law on access to information and privacy. It is however often excluded from lists of countries in this respect as it is considered to be used for suppressing information on grounds of privacy rather than to make information available.

¹²² ICHRP and TI (n 92) 20.

¹²³ *ibid.*

wide-reaching public information campaigns - especially in rural areas, distributing information through a broad range of accessible channels - such as radio broadcasts, decentralised offices, and the translation of information into minority and indigenous languages. Without the use of such decentralised mechanisms that are sensitive to various sections of society, the essence of participation becomes a farce.

Secondly, the use of human rights values and a rights-based understanding of transparency can energise public demand for information beyond the current focus of seeking information based on legal provisions. Considering the obvious lack of incentive to those in authority to release sensitive information, basing such demands on human rights principles can play a significant role in driving this process.

Finally, even though there has been reasonable progress in recent years in enacting access to information laws globally, the human rights case for this can provide additional thrust for the enactment of constitutional and legislative frameworks for transparency and access to information.¹²⁴ This is especially so in countries currently without such laws. Moreover, this can add pressure for the enforcement of existing laws and frameworks in countries where they exist.

7.3.2.3 *The Principle of Accountability*

Accountability is understood in terms of the relationship that exists between those entrusted with power and those affected by their actions, ensuring that the former is

¹²⁴ *ibid.*

held responsible for executing those powers properly.¹²⁵ Accountability applies to both corruption and human rights since, in both situations, persons exercising entrusted power which has an impact on others, are obliged to explain and justify their actions. Accountability therefore entails subjecting power to the obligation that it be exercised transparently, that its exercise be justified and that sanctions apply for its wrongful use - what Schedler calls the three conditions of monitoring, justification and enforcement.¹²⁶ There are however different perspectives on accountability and these differences are apparent from the operation of the principle in anticorruption and human rights efforts.

Accountability can be either horizontal or vertical.¹²⁷ Horizontal accountability, otherwise referred to as 'checks and balances' takes place when public officials are called into question by restraint or oversight by other agencies of government. This could be by courts, ombudsman offices, anticorruption agencies and auditing offices. Vertical accountability, on the other hand, refers to instances where citizens or the electorate hold public officials responsible for their actions mainly through elections, but also through other mechanisms like an active civil society and a free press. In recent times, there has been reference to a third form of accountability, situated somewhere in the middle, termed diagonal accountability.¹²⁸ This refers to situations where citizens engender accountability by being involved in processes like budgeting,

¹²⁵ Annie Marie Goetz and Rob Jenkins, 'Voice, Accountability and Human Development: The Emergence of a New Agenda' (2002) Human Development Report 2002 Background Paper 5.

¹²⁶ Andreas Schedler. 'Conceptualising Accountability' in Andreas Schedler, Larry Diamond and Marc F. Plattner (eds), *The Self-Restraining State: Power and Accountability in New Democracies* (Lynne Rienner 1999) 14.

¹²⁷ Guillermo O'Donnell, 'Horizontal Accountability in New Democracies' in Andreas Schedler, Larry Diamond and Marc F. Plattner (eds), *The Self-Restraining State: Power and Accountability in New Democracies* (Lynne Rienner 1999) 29-52.

¹²⁸ ICHRP and TI (n 92) 27.

expenditure tracking and policy-making that are administered by government institutions.¹²⁹

The principle of accountability with respect to human rights requires the state, as duty-bearer, to abide by human rights standards generally and with regard to its specific obligations under various human rights instruments.¹³⁰ Its operation here emphasises vertical accountability, allowing citizens to question state behaviour in accordance with its obligations. An important aspect of this is the positive obligation to provide mechanisms for those whose rights are violated to seek redress and a concurrent negative obligation on the state not to block access to such channels. Within the framework of human rights therefore, the notion of accountability requires that the state and by extension those in power explain and justify their actions in accordance with their human rights obligations.¹³¹

Significantly, vertical accountability, in comparison with horizontal accountability, provides mechanisms for the involvement of vulnerable and disadvantaged groups who would otherwise not be heard or involved in more formal mechanisms of accountability due to economic, educational and other limitations. Such inclusion is founded on and in compliance with the human rights principles of equality and non-discrimination.

¹²⁹ *ibid.*

¹³⁰ See World Conference on Human Rights, 'Vienna Declaration and Programme of Action' (25 June 1993, Vienna) <<http://www.ohchr.org/en/professionalinterest/pages/vienna.aspx>> accessed 17 March 2017.

¹³¹ ICHRP and TI (n 92) 26.

Accountability in anticorruption efforts has, on the other hand, been predominantly concerned with horizontal accountability. This explains the preoccupation with the establishment of institutions that would ensure the accountability of other public institutions. UNCAC, for instance, requires states to create specialised institutions to prevent and address corruption.¹³² Organisations like the World Bank and the IMF continue to emphasise the need to establish and strengthen governance institutions to deal with corruption. Experience, as demonstrated in earlier discussions in this work, shows that establishing such anticorruption institutions cannot alone ensure accountability. Various factors such as lack of functional autonomy, political interference, poor funding, weak establishment laws and their limited enforcement powers continue to inhibit the success of these institutions.

Moreover, efforts to pursue vertical accountability in anticorruption efforts are often tailored to check and support horizontal accountability institutions and structures, rather than being considered as independent accountability mechanisms.

A rights-based approach to the principle of accountability in anticorruption will therefore emphasise and enable the consideration of mechanisms and activities through which citizens would be able to ensure accountability for corruption. Otherwise referred to as social accountability,¹³³ this would also illuminate consequences of corruption for which there should be accountability, which are not easily visible through current horizontal accountability frameworks. Such

¹³² See Articles 6 & 36, UNCAC.

¹³³ Florian Schatz, 'Fighting Corruption with Social Accountability: A Comparative Analysis of Social Accountability Mechanisms' Potential to Reduce Corruption in Public Administration' (2013) 33(3) 161-174.

consequences would include the disproportionate effect of corruption on the poor and vulnerable groups in society and its overall effect on human rights.

In addition to improving anticorruption efforts, the mutually reinforcing nature of the principles of participation, transparency and accountability in both fields has the potential of bridging the gap between human rights and anticorruption strategies. The prospects of this are discussed in the consideration of the operationalisation of the RBAA below.

7.3.3 Monitoring and Measuring Advantages

A central argument for adopting a RBAA is the promotion of access to human rights mechanisms in dealing with corruption. Significant in this respect are the established monitoring mechanisms under the United Nations human rights system.¹³⁴ This system which is geared towards standard-setting and monitoring of compliance by states with their human rights obligations is carried out through the three instruments of special procedures, universal periodic review and the UN treaty bodies.¹³⁵

Owing to the multi-faceted, entrenched and systematic nature of this monitoring mechanism, it continues to be integral in the promotion and protection of human rights

¹³⁴ Other mechanisms worth mentioning in this regard with similar impact are regional human rights systems which monitor and ensure accountability for human rights at that level. An example here would be the African Commission on Human and Peoples' Rights which has been referred to at various points in this work. For more on the Commission, see Rachel Murray, *The African Commission on Human and Peoples' Rights and International Law* (Hart Publishing 2000).

¹³⁵ UN Human Rights, 'Human Rights Monitoring Mechanisms' (2010) <http://shaheedoniran.org/human-rights-at-the-united-nations/human-rights-monitoring-mechanisms/> accessed 7 April 2016.

globally.¹³⁶ And in view of the apparent link between corruption and the abuse or denial of human rights, it is expected that the consideration of the effects of corruption in human rights monitoring processes will highlight the negative effects of corruption, especially on human development. In addition, such integration would also strengthen anticorruption efforts by making available a wide range of preventive and remedial mechanisms that characterise human rights monitoring to anticorruption practitioners and victims of corruption. The prospects of this lies in the discernible differences that currently exist between the underlying purposes and frameworks for human rights monitoring and corruption monitoring.

Human rights monitoring assesses the occurrence and nature of human rights violations. It goes further to identify and recommend actions that can be taken to reduce such violations and provide remedies for those who suffer from them.¹³⁷ The assessment of human rights violations creates a culture of transparency and is carried out based on well-defined standards stated in various human rights treaties. This is done with a view to evaluating the compliance of states with their human rights commitments.¹³⁸ The emphasis is however, not to sanction states for violating their obligations, but rather to prevent such violations from occurring in the first place.¹³⁹ This is achieved through a mix of actions in the monitoring process, including comments by expert committees on the content and nature of obligations that attach to various human rights. It also involves evaluations and recommendations made by

¹³⁶ John P. Pace, 'The Development of Human Rights in the United Nations, its Control and Monitoring Machinery' (1998) 50 (158) *International Social Science Journal* 499-511.

¹³⁷ Marek Nowicki and Zuzana Fialova, *Human Rights Monitoring* (Helsinki Foundation for Human Rights, Warsaw 2001) 14-15

¹³⁸ OHCHR, 'Report on the Implementation of Economic, Social and Cultural Rights' (8 June 2009) E/2009/90, 4.

¹³⁹ Gauthier De Beco, 'Monitoring Corruption from a Human Rights Perspective' (2011) 15(7) *The International Journal of Human Rights* 1107, 1108.

treaty monitoring bodies on steps that states can take to improve compliance with their human rights commitments.

Such focus on prevention does not preclude the possibility of punitive action being taken before judicial bodies for human rights violations.¹⁴⁰ In fact, it enhances the taking of such action as it makes the public more aware of abuses and empowers individuals and groups affected to make claims on the duty-bearer - the state.

Another significant feature of human rights monitoring is that the process is largely state-driven. States are primarily obliged to regularly appraise the human rights situation in their respective countries. The process however, also includes input from non-state actors like NGOs who evaluate these reports, raise concerns and make recommendations.¹⁴¹ This allows for a more comprehensive, balanced and overall purposeful process, to which mechanisms for monitoring corruption compare less favourably.

Like human rights monitoring, the monitoring of corruption has the potential to provide valuable information on those responsible for corruption and on the nature and effects of corruption.¹⁴² Such information can aid anticorruption practitioners in designing appropriate anticorruption strategies and assist in addressing corruption more efficiently.¹⁴³ This has however not been the case, as the monitoring of corruption has

¹⁴⁰ *ibid.*

¹⁴¹ Morten Kjærum, 'State Reports', in G. Alfredsson et al. (eds.) *International Human Rights Mechanisms: Essays in Honour of Jakob Th. Mo'ller* (Martinus Nijhoff Publishers 2001) 17-24.

¹⁴² Daniel Kauffman, Aart Kraai and Massimo Mastruzzi, 'Measuring Corruption: Myths and Realities' (September 2006) <<http://www1.worldbank.org/publicsector/anticorrupt/corecourse2007/Myths.pdf>> accessed 12 April 2006.

¹⁴³ De Beco (n 139) 1110.

been bedevilled by several issues that limit its usefulness. Firstly, there is the lack of a widely accepted systematic and comprehensive monitoring framework for corruption. At the level of the UN, a monitoring system in the ilk of that for human rights has only just become operational.¹⁴⁴ This system is however based on UNCAC and therefore only takes into consideration the fulfilment by states of their obligations under the Convention. Hence, reports of states only consider steps taken in implementing the various articles in the Convention.¹⁴⁵ In view of the very insignificant reference to victims of corruption in the Convention¹⁴⁶ and its focus on formal structures for dealing with corruption, this monitoring mechanism has limited potential to contribute to the understanding of the human development implications of corruption. It would also add little to the appraisal of mechanisms that can empower citizens and especially victims of corruption: the crux of rights-based approaches.

Apart from this mechanism, organisations like the World Bank and Transparency International have been involved in the monitoring of corruption for a couple of decades. However, the process of such monitoring, the methodology applied and the nature of these organisations affects the utility of such monitoring for addressing corruption. As noted in section 2.3 of chapter two, Transparency International's CPI for instance, measures, rather than monitors corruption. As an indicator with a focus on representing corruption numerically and ranking countries, the CPI fails to show the

¹⁴⁴ United Nations Conference of the State Parties to the United Nations Convention Against Corruption, 'Resolution 3/1: Review Mechanism' (9-13 November 2009) CAC/COSP/2009/3; United Nations Conference of the State Parties to the United Nations Convention Against Corruption, 'Resolution 4/1: Mechanism for the Review of Implementation of the United Nations Convention Against Corruption (24-28 October 2011) CAC/COSP/4.

¹⁴⁵ See for instance Nigeria's country report in the review cycle 2010-2015 at, UNODC, 'Country Report of the Federal Republic of Nigeria' (22 October 2014) <http://www.unodc.org/documents/treaties/UNCAC/CountryVisitFinalReports/2014_10_14_Final_Country_Report_Nigeria.pdf> accessed 12 April 2016.

¹⁴⁶ Reference to the consequences of corruption can be found in Articles 34 and 35 of UNCAC.

practical experiences of victims of corruption, as is the case with human rights monitoring. This provides very little information that could be useful for efforts to curb corruption.¹⁴⁷ Such statistical measurement lacks what UNDP refers to as policy relevance.¹⁴⁸ The same can be said of the World Bank's WGI.¹⁴⁹

It is worth noting that there is a growing volume of research emanating from these institutions that seeks to monitor, rather than measure the state of corruption and appraise anticorruption efforts. Transparency International for instance, now publishes a Global Corruption Report (GCR): a thematic report that highlights mainly qualitative, but also quantitative research focused on corruption in sectors like education, water, the private sector and the judiciary.¹⁵⁰ The reports, unlike other initiatives like the CPI, focuses on information on the impact of corruption, and lessons learnt in anticorruption efforts. They also seek to provide practical and proven tools to improve governance in various countries.

Whilst this is encouraging in terms of its potential to enhance anticorruption efforts, the lack of an extensive and established implementation framework to aggregate and integrate these lessons into anticorruption efforts by liaising with relevant governmental and non-governmental agencies - as is the case with human rights

¹⁴⁷ Francisco-Javier Urra, 'Assessing Corruption: An Analytical Review of Corruption Measurement and its Problems; Perception, Error and Utility (May 2007) Edmund A. Walsh School of Foreign Service, Georgetown University 9.

¹⁴⁸ UNDP, *Human Development Report 2000* (n 32) 90. In essence, UNDP argues that data of the nature provided by the CPI does not provide actionable information that can be useful to anticorruption institutions and practitioners in various countries and contexts to address corruption.

¹⁴⁹ See World Bank Group, 'Worldwide Governance Indicators' <<http://info.worldbank.org/governance/wgi/index.aspx#home>> accessed 12 April 2016. For more on the drawbacks of these indicators, see section on measuring corruption in section 2.3 of chapter 2.

¹⁵⁰ Transparency International, *Global Corruption Report: Overview* <<https://www.transparency.org/research/gcr/>> accessed 21 April 2016.

monitoring - reduces the potential impact of initiatives like this. The integration of corruption issues in human rights monitoring will therefore provide an essential medium to amplify the impact of initiatives like the GCR.

The necessity of such integration is especially important because monitoring the effects of corruption in a manner that demonstrates its human effects can be best done through the peculiar framework provided by human rights mechanisms. The emphasis on the relationship between duty-bearers and rights-holders in the monitoring of human rights and its focus on accountability would make it easier to demonstrate the negative impact of corruption on human rights.

Finally, following years of consultation and research, there is now a framework established under the UN OHCHR for the measurement of human rights.¹⁵¹ The framework for human rights indicators was created in response to long-standing demand to develop and utilise statistical indicators to strengthen the capacity of states in meeting their human rights obligations.¹⁵² In commissioning the framework, the United Nations High Commissioner for Human Rights noted however, that the framework should be utilised with due understanding of the limitations that are intrinsic to any indicator. He cautioned against considering the use of human rights indicators ‘as a substitute for more in-depth, qualitative and judicial assessments which will continue to be the cornerstones of human rights monitoring’.¹⁵³ The indicators are not designed for or suitable for ranking states according to their human rights

¹⁵¹ OHCHR, ‘Human Rights Indicators: Tools for Measuring Progress’ (2012) <<http://www.ohchr.org/EN/Issues/Indicators/Pages/HRIndicatorsIndex.aspx>> accessed 12 April 2016.

¹⁵² *ibid.*

¹⁵³ OHCHR, *Human Rights Indicators: A Guide to Measurement and Implementation* (United Nations 2012) III.

performance. Rather, they are developed to highlight the essential attributes of the rights enshrined in the various human rights instruments by translating these attributes into contextually relevant indicators and benchmarks for measuring and implementing human rights at country level.¹⁵⁴

This cautious approach adopted by the OHCHR is discernibly different from the centrality of indicators with respect to corruption. It reiterates the significance of the UN monitoring system to the realisation of human rights. It further recognises that the use of indicators, whilst serving certain purposes, can only play a limited role in assisting states and other stakeholders in efforts to protect human rights. In a similar vein, whilst corruption indicators have played an important role in drawing attention to the issue of corruption, they have been fairly limited in strengthening anticorruption efforts. The integration of corruption concerns in the comprehensive and established human rights monitoring system has the potential of furthering this purpose.

Considering the work done so far by the HRC regarding the RBAA - which is discussed below - one of the expected immediate outcomes is likely to be the inclusion of corruption in the mandates of human rights committees and other monitoring mechanisms under the UN human rights system. This will go a long way in highlighting the multiple negative impacts of corruption, and further enhance anticorruption efforts.

¹⁵⁴ *ibid.*

7.3.4 Providing Remedies for Victims of Corruption

Arguably the most pragmatic case for a RBAA is that it would provide a medium for victims of corruption to seek redress in court for the violation of their rights arising from corruption. Providing reparation for violation is crucial to human rights. Hence, based on the maxim, “*ubi jus ibi remedium*” (where there is a right, there is a remedy), a RBAA is expected to provide individuals who suffer rights violations because of corruption a means of seeking redress in court.¹⁵⁵ By doing so, it seeks to put the people who suffer from the consequences of corruption at the very heart of the anticorruption regime.¹⁵⁶

The provision of judicial remedies for victims of corruption is also a response to the criminal law approach which concentrates on the prosecution of corrupt public officials. The result of such prosecutions, where there is a guilty verdict, is often imprisonment or imposition of fines with the proceeds going back to the state in the case of the latter. The victims of the acts of corruption are rarely visible in the process, apart from acting as witnesses, where necessary. By connecting acts of corruption to attendant human rights violations however, a new channel of action can be created through which victims of corruption can obtain remedies.

The provision of remedy for victims of corruption through rights-based litigation is provided for in UNCAC as follows:

¹⁵⁵ The principle that victims of rights violations are entitled to effective remedies is fundamental and established in human rights law. See generally Dinah Shelton, *Remedies in International Human Rights Law* (2nd edn, OUP 2005)

¹⁵⁶ UNHRC (n 85) 11.

*Each State Party shall take such measures as may be necessary, in accordance with its domestic law, to ensure that entities or persons who have suffered damage as a result of corruption have the right to initiate legal proceedings against those responsible for the damage in order to obtain compensation.*¹⁵⁷

This notwithstanding, reports of various countries in Africa and elsewhere on the implementation of this provision show that little success has been made in operationalising it.¹⁵⁸ Even in countries like Namibia where the the issue of compensation for damage resulting from corruption is treated under its legislative framework, victims can only seek compensation as part of subsisting criminal action instituted by anticorruption agencies. They would therefore be unable to pursue such compensation independently, in the absence of a criminal prosecution or if a prosecution results in an acquittal.¹⁵⁹ This is a different situation from the approach envisaged in this work. Here, the action for remedies arises from the violation of human rights caused by corruption; such action being one for the enforcement of the rights violated independently of any other action that may arise from the facts, criminal or otherwise.

¹⁵⁷ Article 35, UNCAC. See also Article 9 of the ECOWAS Protocol on the Fight Against Corruption which provides that state parties shall take appropriate steps to provide assistance and protection to victims of corruption, including providing access to compensation and restitution, and permitting the views and concerns of victims to be presented and considered at appropriate stages of criminal trials on corruption.

¹⁵⁸ For country reports on the implementation of UNCAC under the work of the Open-ended Intergovernmental Working Group on the Review of the Implementation of the United Nations Convention Against Corruption, see UNODC, 'Implementation Review Group of the United Nations Convention against Corruption' <<https://www.unodc.org/unodc/en/treaties/CAC/IRG-sessions.html>> accessed 17 May 2016.

¹⁵⁹ See Sections 32 and 39 of Namibia's Prevention of Organised Crime Act 2004 (Act No. 29 of 2004).

As would be expected, discussions on this subject often gravitate towards the complex substantive and procedural issues that would arise from a rights-based litigation on corruption.¹⁶⁰ These include questions regarding the nature and justiciability of such action, the basis for *locus standi*,¹⁶¹ evidentiary challenges in proving the causal link between acts of corruption, the human rights violations complained about and the resulting damage, and the types of remedy that may be granted.

Drawing from principles of human rights, academic research and experiences of similar litigations from different jurisdictions, the discussion that follows looks at the above issues to show the realities and possibilities for rights-based litigation on corruption.

7.3.4.1 *Legal Standing*

Legal standing, expressed in the Latin phrase, *locus standi*, refers to ‘a place of standing; standing in court. A right of appearance in a court of justice, or before a legislative body on a given question.’¹⁶² Any person approaching a court must therefore have legal standing.

Generally, only a person who has a personal interest in a dispute and has suffered distinct and palpable damage can qualify as a ‘proper party’ with legal standing to

¹⁶⁰ See Olaniyan (n 79) 315-338; Adetokunbo Mumuni and Gareth Sweeney, ‘Public Interest Litigation for the Right to Education’ in Transparency International, *Global Corruption Report: Education* (Routledge 2013) 307-310.

¹⁶¹ This is a latin term referring to the right or capacity to bring an action or appear in a court. In any litigation, the party bringing the case in court must first establish locus standi.

¹⁶² Black’s Law Dictionary (6th edn, West Group 1990) 941

present issues for judicial determination.¹⁶³ In the context of this work therefore, such individual must show that his or her rights have been specifically violated or is in danger of being violated by an act of corruption to have legal standing.

Rules on legal standing are necessary to prevent a floodgate of frivolous cases capable of straining the court system.¹⁶⁴ Courts in common law jurisdictions particularly, adopt a very strict interpretation of the principle. Potential litigants will therefore be refused audience if they fail to show a sufficient personal interest in the claim before the court. The Supreme Court of Nigeria reiterated this point when it noted:

*At common law, the position is that, in the realm of public right, for a person to invoke judicial power to determine the constitutionality of legislative or executive action, he must show that either his personal interest will immediately be or has been adversely affected by the action or that he has sustained or is in immediate danger of sustaining an injury to himself, and which interest or injury is over and above that of the general public*¹⁶⁵

However, the trend in many commonwealth jurisdictions and regional courts indicates a willingness by courts to admit of exceptions to the need for litigants to show 'sufficient interest or injury' to have legal standing. A liberal and progressive interpretation of the principle is often adopted where doing otherwise would result in substantial

¹⁶³ Konrad Schiemann, 'Locus Standi' (1990) Public Law 342; W. McCalla, 'Practice and Procedure: Locus Standi' (1979-1981) Advocacy Quarterly 325-330.

¹⁶⁴ Olaniyan (n 79) 320.

¹⁶⁵ *Owudunmi v. Celestial Church of Christ* (2001) 1 WRN 145.

miscarriage of justice. Such liberal interpretation is founded on the doctrine of *actio popularis*¹⁶⁶ which allows individual citizens to initiate legal proceedings in the interest of the public. Hence, in cases involving human rights or constitutional interpretation for instance, courts have shown a willingness to entertain action by private citizens where they would otherwise be unable to do so based on legal standing.

For years, the constitutional and judicial framework of India has been acknowledged for its liberal approach towards public interest litigation. In *Fertilizer Corporation Kamager Union v. Union of India*,¹⁶⁷ the Supreme Court rationalised this by stating that turning away a plaintiff with a good cause because he is not sufficiently affected would create room for government agencies to violate the law without consequences. According to the court, doing so would be inimical to the institution of administrative law, extremely unhealthy and contrary to the public interest.¹⁶⁸

This liberal exception to the principle of legal standing has been applied in other jurisdictions, including the United States,¹⁶⁹ Pakistan,¹⁷⁰ Uganda¹⁷¹ and South Africa.¹⁷² The courts have shown a clear inclination to grant legal standing where the issues raised in a case have merit, the case promotes public good or raises issues of grave public importance that affects the rule of law or human rights or has implications

¹⁶⁶ This is a Latin term with origins in Roman penal law, used to describe action brought by a member of the public in the interest of public order. See Paul du Plessis, *Borkowski's Textbook on Roman Law* (3rd ed, OUP 2015)

¹⁶⁷ (1981) AIR 344.

¹⁶⁸ *ibid.*

¹⁶⁹ *NAACP v Button* 371 US 138. See also William J. Aceves, 'Actio Popularis - The Class Action in International law' (2003) University of Chicago Legal Forum 353-402.

¹⁷⁰ *British American Tobacco Ltd v Environmental Action Network Ltd* (2003) 2 EA 377; *Fazal Din v Lahore Improvement Trust* 21 DLR (SC) 225

¹⁷¹ *Greenwatch v Attorney-General and Others* (2003) 1 EA 87.

¹⁷² *Minister of Health & Others v Treatment Action Campaign & Others (No.2)* Case CCT 8/02 [2002] ZACC 15.

for the fundamental law of the land, the constitution. And the courts have done so even though the person being granted standing cannot establish personal interest or loss.¹⁷³

With specific reference to human rights cases, the African Commission on Human Rights (ACHR) in the case of *The Social and Economic Rights Action Centre (SERAC) and the Centre for Economic and Social Rights (CESR) v. Nigeria* stated that the doctrine of *actio popularis* was applicable to cases brought under the African Charter on Human and Peoples' Rights. It confirmed that the court would therefore entertain cases brought by private citizens, where those cases would otherwise be inadmissible on grounds of legal standing.¹⁷⁴

This doctrine enables good-spirited citizens or CSOs to institute such cases on behalf of others whose rights have been violated but are unable to seek remedies in court due to economic or social vulnerability or other impediments. Hence, in *SERAP v. Federal Republic of Nigeria*, the Socio-Economic Rights and Accountability Project (SERAP)¹⁷⁵ sued the State on behalf of the people of the Niger Delta region of the country, alleging the violation of the rights to health, adequate standard of living and a healthy environment, amongst others, of the people. The Government objected to the

¹⁷³ In *Fawehinmi v. Akilu* (1987) 4 NWLR (Pt 67) 797, the Supreme Court of Nigeria, based on this, recognised the right of a private citizen to bring a complaint in respect of a murder case, stating that 'the peace of the society at large is the responsibility of all persons in the country and as far as protection against crimes is concerned, every person in the society is each other's keeper'.

¹⁷⁴ *The Social and Economic Rights Action Centre (SERAC) and the Centre for Economic and Social Rights (CESR) v Nigeria*, Communication 155/96, paras 55-58. See also *Greenwatch v. Attorney-General and Others* (2003) 1 EA 87.

¹⁷⁵ Suit No. ECW/CCJ/JUD/18/12. The Socio-Economic Rights and Accountability Project is one of the most recognised and influential NGOS in Nigeria, with a stated objective of promoting transparency and accountability in the public and private sectors in the country through human rights. The work of the NGO is divided into the three main areas of Research and Publication, Monitoring and Advocacy and Litigation and Legal Services. See <<http://serap-nigeria.org/>> accessed 25th May 2016.

legal standing of SERAP on the ground that the application was made in its own name without the prior information, accord and interest of the Niger Delta people. The ECOWAS Court of Justice dismissed this argument. It held that SERAP had *locus standi* to institute the action as it had shown that there was a substantial case of abuse of human rights and it did not matter if the personal rights or interests of SERAP were not affected.¹⁷⁶

The ECOWAS Court of Justice applied this doctrine to corruption and human rights in the ground-breaking case of *SERAP v. President of the Federal Republic of Nigeria and Another*.¹⁷⁷ Here, the Court was called upon by SERAP to decide whether revelations of massive corruption in the Universal Basic Education Commission (UBEC), an agency of the Federal Government, amounted to a violation of the right to education of Nigerian children. This was the first case that directly considered the issue of the violation of human rights by corruption. In a landmark decision that attracted much acclaim globally,¹⁷⁸ the court held that the government had a responsibility to ensure that funds disbursed for basic education were utilised for that purpose. Hence, the evidence of embezzlement of those funds disclosed in reports

¹⁷⁶ In reaching its decision, the court was persuaded by a plethora of cases cited by SERAP from different jurisdictions. These cases established that, in cases of human rights violations, the plaintiff need not be affected personally or have any personal interest to have standing. In one of these, the Indian case of *SP Gupta v. Union India* (1982) 2 SCR 365, 377, the court aptly explained the doctrine by stating that 'Where a legal wrong or legal injury is caused to a person or to a determinate class of persons by reason of violation of any constitutional or legal right or any burden is imposed in contravention of any constitutional or legal provision or without authority of law or any such legal wrong or legal injury or illegal burden is threatened and such person or determinate class of persons is by reason of poverty, helplessness or disability or socially or economically disadvantaged position, unable to approach the court for relief, any member of the public can maintain an application for an appropriate direction, order or writ in the High Court...'

¹⁷⁷ Suit No: ECW/CCJ/APP/12/07.

¹⁷⁸ See Adetokunbo Mumuni and Gareth Sweeney, 'Public Interest Litigation for the Right to Education' in Transparency International, *Global Corruption Report: Education* (Routledge 2013) 307-310; Christopher Tansey, 'ECOWAS Community Court of Justice Ruling Holds Government of Nigeria Accountable for Fulfilling the Right to Education Despite Corruption' (*Human Rights Brief*, 11 March 2011) <<http://hrbrief.org/2011/03/ecowas-community-court-of-justice-ruling-holds-the-government-of-nigeria-accountable-for-fulfilling-the-right-to-education-despite-corruption/>> accessed 5 April 2017.

of investigations amounted to a prima facie violation of the right to education. The court directed the government to make funds available to cover the shortfall arising from the embezzlement. On the issue of the legal standing of SERAP to institute the action, the court justified recognizing its standing, by noting that:

The doctrine of 'actio popularis' developed under Roman law to allow any citizen to challenge a breach of public right in court was a way of ensuring that the restrictive approach to the issue of standing would not prevent public spirited individuals from challenging a breach of a public right in Court.¹⁷⁹

It is worth noting that the above issues with legal standing would not arise in situations where the victim invoking the jurisdiction of the court can clearly establish that his personal interest was directly and adversely affected by acts of corruption.

7.3.4.2 Causation

Establishing causation between acts of corruption and human rights violations is difficult due to the secretive nature of corruption and the multiplicity of factors that may intervene by either aggravating or mitigating the violation of rights resulting from corruption.

¹⁷⁹ SERAP v. President of the Federal Republic of Nigeria and Another (n 175) para 33.

Causation is concerned with the relationship that exists between causes and effects in the natural state of things.¹⁸⁰ Causation in law however refers to the legal mechanism for deciding the role played by a specific act in bringing about a harm complained about.¹⁸¹ In other words, the question as to whether a conduct counts as the sufficient, adequate or proximate cause of a harm is resolved through rules of causation.¹⁸² It is therefore instrumental in determining the limits of attribution and responsibility, by identifying the relevant facts to be considered in a case and establishing the boundaries of liability based on those facts for purposes of reparation.¹⁸³

It is a fundamental principle of law that a defendant should not be held liable for an injury suffered by the plaintiff, unless the action or omission of the defendant caused the plaintiff's injury.¹⁸⁴ In analysing this factual causation, the courts must determine if the plaintiff's injury would have occurred, 'but for' the conduct of the defendant.¹⁸⁵ If the answer to this is yes and the injury would have occurred independently of the conduct of the defendant, then no liability arises. If the answer is no, then the defendant is liable. Furthermore, where multiple factors are responsible for the

¹⁸⁰ León Castellanos-Jankiewicz, 'Causation and International State Responsibility' (2012) ACIL Research Paper No 2012-07, 7.

¹⁸¹ Pointing this out is important because the standard of proof required in a court of law to establish causation is more stringent than that required for academic discourse. Hence, whereas the impact of corruption on human rights may be apparent in such discourses, it is a lot more difficult to establish this under the rules of evidence applied in court.

¹⁸² Olaniyan (n 79) 331.

¹⁸³ See H. L. A Hart and A. M. Honoré, *Causation in the Law* (Oxford, Clarendon Press 1959).

¹⁸⁴ John Pavlakis and Louise Mallon, 'What's the Risk? Causation, Scope of Liability and Civil Liability Reforms' (*Conventus Law* 31 August 2012) <<http://www.conventuslaw.com/archive/australia-whats-the-risk-causation-scope-of-liability-and-civil-liability-reforms/>> accessed 5 April 2017; A. M. Honoré, 'Causation and Remoteness of Damage' in A. Tunc (ed), *International Encyclopaedia of Comparative Law*, (Tübingen, JCB Mohr 1983) ch 7.

¹⁸⁵ The effect of the 'but for' test established in cases like *Donoghue v Stephenson* (1932) AC 562, HL, is that if the injury to the plaintiff would have occurred independently of the conduct of the defendant, then causation in fact has not been established and there is no liability on the part of the defendant. See also *R v White* [1910] 2 KB 124.

plaintiff's injury, then the defendant will only be liable if his conduct played a necessary or substantial role in contributing to the injury.¹⁸⁶

The strict application of the rules of causation to rights-based corruption litigation would make it difficult for victims of corruption to establish causation between corrupt conduct and resulting suffering arising from a violation of their rights. The violation of human rights in a case could be attributed to a multiplicity of social, economic, political, cultural and institutional factors of which corruption is often only a part. Victims of corruption would therefore have to prove that the act or acts of corruption complained about played a necessary and substantial role in occasioning the rights violation in question.

To overcome these challenges, it has been suggested that the burden of proving causation in rights-based corruption litigation should be approached from the perspective of the doctrine of state responsibility, especially for human rights violations, rather than under the strict rules of domestic law.¹⁸⁷ The law of state responsibility attaches responsibility to a state for internationally wrongful conduct that is attributable to the state under international law or constitutes a breach of an

¹⁸⁶ Castellanos-Jankiewicz (n 180) 9. In certain cases, like the tort of negligence, the plaintiff is further required to prove legal causation by showing that the conduct of the defendant was the 'proximate' cause of his suffering. This relates to the foreseeability of the injury to the plaintiff arising from the conduct of the defendant. For liability to arise, the defendant should have foreseen the injury to the plaintiff. The aim of the test of legal causation is to limit the scope of liability to injuries that have some reasonable relationship to the risk arising from the conduct of the defendant. The outcome of this is that if a risk was not reasonably foreseeable, liability will not be imposed. The test of legal causation is also referred to as the test of proximate cause or adequate cause. The expression used in a particular situation often depends on whether the trial is criminal or civil, and the manner in which the test is expressed in statute or common law. The content of the test itself is however often the same.

See Marshall S. Shapo, *Principles of Tort Law* (2nd edn. St. Paul Minnesota 2003) 238-244; West's Encyclopaedia of American Law (2nd edn 2008) <<http://legal-dictionary.thefreedictionary.com/causation>> accessed 20 May 2016.

¹⁸⁷ Olaniyan (n 79) 334.

international obligation of the state.¹⁸⁸ According to prevalent views on the subject, causation and resulting damage is considered irrelevant to determine an internationally wrongful act. The emphasis is on the wrongfulness of the act, which subsumes damage, even though damage may be a necessary consequence in certain situations.¹⁸⁹ In explaining the difference between the operation of the principle of causation in domestic law and under the law of state responsibility, Olaniyan stated:

*While national legal systems require that damages in law amount to injury, and as such are capable of being compensated, the notion of an internationally wrongful act concerns itself with legal relationships arising from a determination of state responsibility, regardless of damage or injury. Yet, the element of damage or injury may be said to be implicit in the failure to fulfil the obligation. Accordingly, attribution of conduct to the state as a subject of international law is based on criteria determined by international law and not on the mere recognition of a link of factual causality.*¹⁹⁰

Furthermore, the principle of state responsibility holds a state accountable for the acts of its organs, including persons or entities exercising legislative, executive, judicial or other functions.¹⁹¹ The foundation of the application of the concept of state responsibility to relationships between states and citizens, and to that extent, the issue of causation in rights-based corruption litigation is found in the obligation of states to

¹⁸⁸ ILC, 'Articles on Responsibility of States for Internationally Wrongful Acts' in *Yearbook of the International Law Commission* (Vol II, Pt 2 United Nations 2001) 26.

¹⁸⁹ David Harris, *Cases and Materials on International Law* (7th ed. Sweet and Maxwell 2010) 424.

¹⁹⁰ Olaniyan (n 79) 333.

¹⁹¹ See Articles 4-11, ILC Articles on Responsibility of States for Internationally Wrongful Acts.

respect human rights. States have an internationally recognised responsibility for violating human rights obligations.¹⁹² Hence, where a violation of rights stems from corruption, proving causation would simply require showing a connection between the corrupt conduct and the resulting violation of human rights. The responsibility of the state for the rights violation would automatically be invoked by the wrongful act of corruption.

Moreover, inherent in the responsibility of states to respect and protect human rights is the obligation of vigilance and diligence.¹⁹³ The occurrence of corruption by public officials indicates the failure of the state to prevent, investigate, prosecute and punish perpetrators of corruption. Where rights are violated as a result, the state bears responsibility for its failure to be vigilant and diligent in the protection of human rights. In any case, public officials are considered organs of the state. Hence, the state would normally bear responsibility for their wrongful acts and the consequences thereof.

It is this reasoning that was applied by the ECOWAS Court of Justice in *SERAP v. President of the Federal Republic of Nigeria and Another*, in holding that the embezzlement of funds allocated for the provision of basic education amounted to a violation to the right to education of Nigerian children.¹⁹⁴ In arriving at its decision, the court held that results of a report of an investigation into the affairs of UBEC carried out by an anticorruption agency confirming the embezzlement was sufficient to establish that the embezzlement led to a violation of the right to education.¹⁹⁵ The

¹⁹² Theodor Meron, 'State Responsibility for Violations of Human Rights' in *Proceedings of the 106th Annual Meeting* (American Society of International Law 1989) 372-385.

¹⁹³ ILC, *Yearbook of International Law Commission* (Vol II, Pt 2 United Nations 2001) 153-155.

¹⁹⁴ *SERAP v. President of the Federal Republic of Nigeria and Another* (n 175).

¹⁹⁵ *ibid.* Considerable advances have been made in the last couple of decades in the creation of detailed quantitative and qualitative tools employed in measuring and monitoring corruption. Hence, it

decision of the Court shows that in rights-based corruption litigation, the court only requires proving 'general causation' between the incidence of corruption and the violation of rights, rather than 'specific causation' corruption by named corrupt officials and particular rights violations.¹⁹⁶

Overall, the *SERAP* case provides much encouragement for rights-based corruption litigation. It demonstrates the willingness of the courts to relax the rigid rules on causation and legal standing to provide fair and reasonable remedies in corruption cases.

Furthermore, being civil litigation, a lesser burden of proof is required in such cases. This contrasts with the criminal prosecution of corruption under the current regime where the guilt of the accused must be proved beyond reasonable doubt. Here, the plaintiff would only be required to establish causation on a balance of probabilities.¹⁹⁷ Victims of corruption will therefore find it considerably easier to prove corruption and access judicial remedies. It will also ensure that corrupt public officials who might otherwise not be held accountable for their actions due to the inability of prosecuting authorities to discharge the burden of proving their guilt beyond reasonable doubt in

should not be too difficult to find similar information of embezzlement and other types of corrupt conduct for purposes of establishing causation of human rights violations by corruption. Potential litigants can also take advantage of the existence of Freedom of Information laws in most countries including Nigeria to acquire the needed information from public records and offices.

¹⁹⁶ According to Olaniyan, 'General causation would presumably require the establishment of a causal link between large scale corruption, failure to exercise vigilance and diligence. . . and the resulting human rights violations. Specific causation, on the other hand, would entail proving that a specific human rights violation was caused by a set of corrupt acts or by named or identified corrupt officials. See Olaniyan (n 79) 335.

¹⁹⁷ John Hatchard, 'Adopting a Human Rights Approach Towards Combating Corruption' in Martine Boersma and Hans Nelen (eds), *Corruption and Human Rights: Interdisciplinary Perspectives* (Intersentia 2010) 7, 18.

criminal trials, might yet be held accountable due to the lesser burden of proof required.

Being a civil action, such litigation avoids the role of political influence in preventing certain criminal prosecutions as well. The discretionary power of anticorruption agencies in deciding on cases to prosecute would not affect such civil actions. And the power of *nolle prosequi*¹⁹⁸ which, in common law jurisdictions, empowers the Attorney-General to discontinue criminal trials, would also not apply to rights-based corruption litigation.

7.3.4.3 *Possible Remedies*

An important factor that precipitated the discourse of a RBAA is the lack of appropriate and effective remedies for victims of corruption. The most obvious remedy would be the provision of monetary compensation for damages resulting from the violation of their rights. However, the remedies which a court may generally grant in human rights cases go beyond damages and include equitable remedies like injunctions, declarations and such other remedies as the court deems effective.

With respect to corruption, the court could also make orders that will have the broader effect of preventing corruption, ensuring the punishment of perpetrators and the

¹⁹⁸ This is a Latin phrase for 'we shall no longer prosecute'. It refers to a declaration by a prosecutor in a criminal case to cease from further pursuing the case. The Constitution of Nigeria empowers the Attorney-General of the Federation - and of the States - to exercise this power by discontinuing at any stage before judgment is delivered, any criminal proceeding instituted or undertaken by him or any other authority or person. See Sections 174 (1)(c) and 211(1)(c) of the Constitution of the Federal Republic of Nigeria, 1999.

recovery of stolen wealth.¹⁹⁹ It is only through a consideration of all these factors that the court can provide practical, full and effective remedies that would have a positive long-term impact on the anticorruption regime in a country. This was demonstrated in the *SERAP Case* where the orders made by the court included requiring the Nigerian government to provide the necessary funds to cover the shortfall in sums budgeted for the education sector and further asking the government to take steps to ensure that the right to education was not impaired by corruption.

The courts will therefore grant such legal and equitable remedies as they consider fair and just in each case, with due regard to providing reparation for the victims of corruption in the specific case, but also within broader objectives of the anticorruption regime and human rights obligations of the state.

In conclusion, it is important to recognise the difficulties apparent in pursuing rights-based corruption litigation. In countries with corrupt courts, weak judicial systems, civil society that concentrates more on advocacy than litigation and poor human rights regimes, pursuing such cases can be particularly daunting. However, as demonstrated here, the substantive and procedural challenges to such litigation are not insurmountable. Furthermore, as is obvious from the overall discourse in this chapter, rights-based litigation is only one component of a broader anticorruption approach founded on human rights.

¹⁹⁹ Olaniyan (n 79) 337.

7.4 Towards Operationalising the Rights-Based Approach to Anticorruption

Despite numerous conversations about a RBAA since the turn of the century, not much has been done in terms of its practical implementation. There is yet to be any clear-cut comprehensive policy on operationalising the approach. Efforts by various IDIs and scholars thus far have been largely conceptual. The discussion that follows looks at the steps and recommendations made with a view to operationalise the RBAA. The discussion is broadly divided into two sections. The first part takes a summary view of the approach of various IDIs towards the RBAA, especially with reference to its application to countries in SSA. The second takes an in-depth analysis of actions taken under the Office of the United Nations High Commissioner for Human Rights (OHCHR) - particularly by the Human Rights Council (HRC) - to operationalise the RBAA. The focus on the latter is because, more than any other institution, it has taken the most decisive steps and shown the most enduring commitment towards putting in place a framework for operationalising the RBAA

Before doing this however, there are two issues worth pointing out. Firstly, as is obvious from the preceding sections of this chapter, there is now a consensus in the field of development that corruption has a negative impact on human rights. Secondly and drawing from this, there is also a recognition and conviction - and what may rightly be considered enthusiasm - that a RBAA will enhance current efforts to curb corruption. Apart from a few dissenting academic perspectives,²⁰⁰ these two views

²⁰⁰ See for instance the views of Goodwin and Rose-Sender who argue that the rights-based approach is an unwelcome addition to the global governance and anticorruption discourse. Morag Goodwin and Kate Rose-Sender, 'Linking Corruption and Human Rights: An Unwelcome Addition to the Development Discourse' in Martin Boersma and Hans Nelen (eds) *Corruption and Human Rights: Interdisciplinary Perspectives* (Intersentia 2010) 221-240.

are common to and provide the basis for all the actions and steps to operationalise the RBAA discussed below. Establishing this at this point is important, so that the discussion that follows will focus on practical steps to operationalise the RBAA without the need to make these points repeatedly.

7.4.1 General Actions/Recommendations Towards Operationalising the Rights-Based Approach to Anticorruption

7.4.1.1 United Nations Development Programme (UNDP)

One of the first IDIs to explore the RBAA was UNDP. In a paper released in 2004, it looked at ways of incorporating anticorruption strategies within broader human rights-based approaches to development.²⁰¹ It identified the essential elements of a rights-based approach to include express linkages to rights, accountability, empowerment, participation and non-discrimination.²⁰² Within this framework, the paper looked at ways in which anticorruption policies can take these elements into consideration in order to deal with corruption more effectively. To illustrate this further, it looked at how these principles are reflected in the provisions of UNCAC and within certain national anticorruption regimes, including those of Hong Kong, Botswana, India and Sri Lanka.²⁰³ This paper was however limited in its scope as the integration of

²⁰¹ Thusitha Pilapitiya, 'The Impact of Corruption on the Human Rights Based Approach to Development' (September 2004) UNDP Research Policy Paper 5-6.

²⁰² *ibid* 10-14.

²⁰³ *ibid* 30-37.

anticorruption strategies with the rights-based approach was considered with respect to the issue of access to justice alone.

In the time since, UNDP has been a major contributor to the various strategic steps taken by the OHCHR to operationalise the RBAA. For instance, both bodies jointly organised a seminar on the subject in Seoul in September 2004 which led to the publication of a booklet on *Good Governance Practices for the Protection of Human Rights*.²⁰⁴ UNDP was also a part of the broader United Nations Conference on Anti-Corruption Measures, Good Governance and Human Rights which was held in Poland in November 2006.²⁰⁵ In the follow-up to the conference, the OHCHR is developing a guidebook on human rights and anticorruption for practitioners in collaboration with UNDP and UNODC. This is expected to be the first comprehensive policy document on implementing the RBAA. These steps are discussed in more detail when efforts of the OHCHR are considered below.

7.4.1.2 *European Union (EU)*

The EU has, in the last few years, taken a few important steps in exploring the relationship between corruption and human rights. In February 2013, the European Parliament's Subcommittee on Human Rights organised a workshop on 'Corruption and Human Rights in Third Countries.' Presentations at the workshop explored various aspects of this subject including the implications of the relationship for

²⁰⁴ See OHCHR, *Good Governance Practices for the Protection of Human Rights* (United Nations 2007).

²⁰⁵ Detailed information on the conference, including its background, themes and documentation can be found at <http://www.ohchr.org/EN/Issues/Development/GoodGovernance/Pages/WarsawConference.aspx> accessed 20 April 2017.

anticorruption efforts.²⁰⁶ Others emphasised the need for the EU to tackle the question both internally in its countries and externally in third countries.²⁰⁷ The nature of the connection between corruption and human rights was also examined with respect to particular sectors like trade.²⁰⁸ The implications of this within countries like Russia²⁰⁹ and Angola²¹⁰ were also discussed.

The proceedings of this workshop and the actions that followed provided the backdrop for a European Parliament resolution on 8 October 2013 titled, 'Corruption in the Public and Private Sectors: The Impact on Human Rights in Third Countries.'²¹¹ Even though the preambular aspects of the resolution reiterated the negative impact of corruption on human rights and the importance of applying human rights principles in tackling corruption, it did not provide much detail in terms of recommending particular actions that could be taken in this respect. Instead, it dealt with wider issues like the coherence of internal and external anticorruption policies of the EU, capacity building for anticorruption institutions, corporate responsibility, and international cooperation and assistance, amongst others. For third countries like those in SSA, the most relevant recommendation in this respect was the view that standard human rights

²⁰⁶ Gareth Sweeney, 'Linking Acts of Corruption with Specific Human Rights' in European Parliament Policy Department, *Corruption and Human Rights in Third Countries* (European Union 2013) 8-11.

²⁰⁷ Jean-Louis Ville, 'EU Policy and Action to Fight Corruption While Safeguarding Human Rights' (European Parliament Sub-Committee on Human Rights Workshop on Corruption and Human Rights in Third Countries, Brussels, 28 February 2013).

²⁰⁸ Andrew Feinstein, 'Corruption in Trade and its Impact on Human Rights in Third Countries' (European Parliament Sub-Committee on Human Rights Workshop on Corruption and Human Rights in Third Countries, Brussels, 28 February 2013).

²⁰⁹ Julia Pettengill, 'Impact of Corruption on Human Rights in Russia' (European Parliament Sub-Committee on Human Rights Workshop on Corruption and Human Rights in Third Countries, Brussels, 28 February 2013).

²¹⁰ Rafael Marques de Morais, 'Impact of Corruption on Human Rights in Angola' (European Parliament Sub-Committee on Human Rights Workshop on Corruption and Human Rights in Third Countries, Brussels, 28 February 2013).

²¹¹ European Parliament Resolution 2013/2074 (INI) (8 October 2013).

clauses which are contained in agreements between the EU and third countries include a commitment to the promotion of good governance.²¹²

However, more detailed recommendations with relevance to third countries can be found in a March 2017 follow-up draft motion for the Parliament.²¹³ The motion goes beyond just affirming a connection between corruption and human rights and asserts that, ‘there is a direct link between the promotion and strengthening of human rights and corruption prevention.’²¹⁴ It therefore recommends creating synergies between current criminal justice approaches to tackling corruption and a human rights-based approach.

Like the 2013 resolution, this motion stressed the need to include anticorruption clauses alongside human rights clauses in agreements with third countries with a view to consulting, monitoring and, where necessary, sanctioning countries in the event of serious corruption that causes human rights violations.²¹⁵ The motion further calls on bodies like the European Commission and the European External Action Service to devise joint programming on human rights and corruption through actions such as including a specific benchmark on the connection between corruption and human rights in the Human Rights and Democracy Strategy Papers.²¹⁶ It also calls on EU member states to support efforts at the UN on the RBAA in areas such as the

²¹² *ibid* Par. 47.

²¹³ European Parliament Committee on Foreign Affairs, ‘Draft Motion for a European Parliament Resolution on Corruption and Human Rights 2017/2028 (INI)’ (28 March 2017). The motion was referred to the appropriate committees (Development and Foreign Affairs) for necessary amendments in March 2017. It is scheduled for debate in plenary on 12 September 2017 and subsequent vote on 13 September 2017. For more on developments relating to the motion, see <[<http://parltrack.euwiki.org/dossier/2017/2028\(INI\)>](http://parltrack.euwiki.org/dossier/2017/2028(INI)) accessed 3 August 2017.

²¹⁴ *ibid* Par. 1.

²¹⁵ *ibid* Par. 5.

²¹⁶ The Human Rights and Democracy Strategy Papers are part of the broader EU Action Plan on Human Rights and Democracy which is intended to strengthen and reinforce the EU’s human rights policy and policy tools. With both internal and external components, the current action plan covers the period 2015-2019 and follows on from the first action plan of 2012. See Council of the European Union, *EU Action Plan on Human Rights and Democracy* (European Union 2015).

examination of human rights violations arising from corruption in the universal periodic review process and the establishment of a UN Special Rapporteur on financial crime, corruption and human rights.²¹⁷

7.4.1.3 *The African Union (AU)*

In the context of this work, it is rather regrettable that the AU is yet to take any decisive step towards implementing a RBAA or even explore seriously, the relationship between corruption and human rights. This notwithstanding, there have been some nuanced references to the corruption-human rights nexus within the AU's legal and institutional frameworks for corruption and human rights. For instance, unlike most other international instruments on corruption, the preamble to the AU Convention on Preventing and Combating Corruption takes cognisance of 'the need to respect human dignity and to foster the promotion of economic, social and political rights in conformity with the provisions of the African Charter on Human and Peoples' Rights and other relevant human rights instruments'.²¹⁸ Furthermore, Article 2 of the Convention states the objectives of the Convention to include the promotion of socio-economic development by 'removing obstacles to the enjoyment of economic, social and cultural

²¹⁷ *ibid* Par. 14.

²¹⁸ African Union Convention on Preventing and Combating Corruption (adopted 11 July 2013, entered into force 5 August 2006) (2004) 43(1) ILM 5.

rights as well as civil and political rights.’ Respect for human and peoples’ rights is also stated as one of the fundamental principles of the Convention in Article 3.²¹⁹

The African Charter on Democracy, Elections and Governance also shows an inherent recognition of the relationship between corruption and human rights. It refers to, amongst other things, respect for human rights as one of the guiding principles for attaining good governance, rule of law and democracy on the continent.²²⁰ In similar vein, the Pretoria Declaration on Economic, Social and Cultural Rights refers to ‘corruption, misuse and misdirection of financial resources’ as some of the restraints that states have to address in their bid to take all appropriate measures towards the full realisation of economic, social and cultural rights.²²¹

Another mechanism that takes into consideration the RBAA is the monitoring and compliance procedure under the African Charter on Human and Peoples’ Rights. In its concluding observations and recommendations on Nigeria’s fifth and most recent Periodic State Report - covering the period 2011 to 2014 - the African Commission on Human and Peoples’ Rights (ACHPR) commended the country for measures taken to address the challenge of corruption as a way of keeping its human rights obligations under the African Charter.²²² It further called on the government to take more action to strengthen and implement measures to deal with corruption in order to guarantee the enjoyment of human rights.²²³ Even though these actions were not taken as part

²¹⁹ *ibid.* Unfortunately, similar provisions recognising the relationship between human rights and corruption are not included in sub-regional anticorruption instruments like the ECOWAS Protocol on the Fight Against Corruption and the SADC Protocol Against Corruption.

²²⁰ African Charter on Democracy, Elections and Governance (adopted 30 January 2007) Art. 3.

²²¹ Pretoria Declaration on Economic, Social and Cultural Rights in Africa (adopted 7 December 2004) Article 3.

²²² ACHPR, ‘Concluding Observations and Recommendations on the 5th Periodic Report of the Federal Republic of Nigeria on the Implementation of the African Charter on Human and Peoples’ Rights (2011 – 2014)’ (57th Session, Banjul, the Gambia, 4-11 November 2015) Par. 30.

²²³ *ibid* Paras. 71 & 114.

of a policy or practice under a RBAA as such, it demonstrates a recognition by both the State and the Commission of the role of anticorruption measures in securing human rights and vice versa.

A final mechanism worth referring to is the role of the AU Advisory Board on Corruption. The Board was established as a follow-up mechanism under the AU Convention on Preventing and Combating Corruption. It has a broad mandate to promote and encourage the adoption of measures by State Parties to the Convention to deal with corruption.²²⁴

Significant for the current discourse is the mandate of the Board to build partnerships with the African Commission on Human and Peoples' Rights to facilitate dialogue in addressing corruption.²²⁵ Even though the AU Convention on Preventing and Combating Corruption entered into force in August 2006, the Board was only created in May 2009. It is rather instructive that the Commission is credited with being one of the key stakeholders who facilitated the process leading to the establishment of the Board with the objective of tackling gross violations of socio-economic rights in Africa. In further demonstration of an emerging path to partnership between both bodies, the Chairperson of the Board was invited to give a speech at the joint opening ceremony of the 59th ordinary session of the Commission and 28th ordinary session of the African Committee of Experts on the Rights and Welfare of the Child on 21 October 2016. In his speech, Hon. Daniel Batidam noted that 'the fight against corruption in Africa is also an effort towards deepening socio-economic rights on the continent.' He

²²⁴ AU Convention on Preventing and Combating Corruption, Art. 22. Such measures include the creation of awareness on the nature and extent of corruption on the continent, advising governments on how to tackle corruption and submitting periodic reports to the Executive Council of the AU on the progress made by each State Party in complying with the provisions of the Convention.

²²⁵ *ibid* Art. 22(5)(g).

accordingly pledged the commitment of the Board to the protection of human rights in its effort to address corruption.²²⁶

Hence, even though there is yet to be a well-defined policy or mechanism exploring a RBAA under the AU, the instruments, mechanisms and emerging partnerships discussed here show that there is a broad framework within which the approach can be explored and implemented.

7.4.1.4 *The World Bank*

The World Bank has had a tumultuous and controversial relationship with human rights throughout its history. Broadly, the controversy concerns the question of whether the Bank's apolitical mandate - discussed in section 6.1.1 of chapter six²²⁷ - allows it to consider human rights in its decision-making, development policies and operations. The discussion here does not intend to deal with the various issues and developments concerning the World Bank and its handling of human rights issues, as this is beyond the scope and objectives of this work.²²⁸ However, it will make a number of points that

²²⁶ See full text of the speech at http://www.achpr.org/files/sessions/59th/statements/auabc_statement/auabc_opening_statement.pdf accessed 20 April 2017.

²²⁷ See Article III, Section 4(vii) and Article IV, Section 10 of the Articles of Agreement of the World Bank.

²²⁸ For more on this see David Kinley, 'Human Rights and the World Bank: Practice, Politics, and the Law' in World Bank, *The World Bank Legal Review: Law, Equity and Development* (Vol 2, Martinus Nijhoff Publishers 2006) 353-383; Marc Darrow, *Between Light and Shadow: The World Bank, the International Monetary Fund and International Human Rights Law* (Hart Publishing 2006); Philip Alston, 'Ships Passing in the Night: The Current State of the Human Rights and Development Debate Seen Through the Lens of the Millennium Development Goals' (2005) 27(3) Human Rights Quarterly 755-829.

provide some insights on the current and prospective role of the Bank regarding the RBAA.

Firstly, in contrast to its long-standing position not to consider human rights issues on the grounds of their political nature, the Bank has since the 1990s at least, admitted the relevance of human rights in its work, albeit to a limited degree. This has been made possible by the work of two General Counsels of the Bank, Ibrahim Shihata and Roberto Dañino. Through a progressive interpretation of the Articles of Agreement of the Bank, they expressed the view that the Bank could engage in human rights issues, subject to certain conditions.²²⁹ The essence of these conditions was that the Bank could take human rights into account in its work where such issues had an economic impact or relevance. Whilst Shihata appeared to be of the view that this should apply more to economic, social and cultural rights,²³⁰ Dañino took an 'all human rights' perspective on the premise that civil and political rights had clear implications for the realisation of economic, social and cultural rights and vice versa.²³¹

The second point worth noting is that, despite this, the Bank continues to adopt a rather cautious approach on the issue of human rights. It has shown no willingness to mainstream human rights in its work. This is buttressed by the fact that decades after the liberal interpretation of the Bank's mandate referred to above, it still does not have a single comprehensive human rights policy. This has been a ground for much criticism of the Bank with a 2015 report by the UN special rapporteur on extreme

²²⁹ Roberto Dañino, 'The Legal Aspects of the World Bank's Work on Human Rights: Some Preliminary Thoughts' in World Bank, *The World Bank Legal Review: Law, Equity and Development* (Vol 2, Martinus Nijhoff Publishers 2006) 295-324.

²³⁰ Ibrahim F. I. Shihata, 'Legal Opinion on the Prohibition of Political Activities in the Bank's Work, 11 July 1995' in *World Bank Legal Papers* (Martinus Nijhoff Publishers 2000) 219-244.

²³¹ Dañino (n 229) 306.

poverty and human rights referring to the Bank's approach to human rights as incoherent, counterproductive, unsustainable and outdated.²³²

Even though the Bank has subscribed to and actively promoted the concept of a rights-based approach to development, its engagement with the approach shows a rather superficial and reactive commitment to human rights. This is demonstrated in a couple of ways. The first is by simply showing how the work of the Bank contributes positively to the realisation of human rights.²³³ Hence most policy and programme documents of the Bank try to illustrate and argue on how, for instance, its work in the area of health contributes to the enjoyment of the right to health and how its education programmes contribute to the realisation of the right to education, and so on. The second way the Bank approaches human rights is by arguing that, by emphasising local participation in various stages of its projects, it is keeping to human rights principles like participation.²³⁴ In doing all this however, the Bank avoids analysing its human rights commitments within established frameworks that refer to concepts such as rights-holders and duty-bearers.

The third and final point is that, drawing from the above, it is rather obvious that the Bank approaches human rights and rights-based approaches as development policy with attendant practices and outcomes, whilst ignoring the legal guarantees and obligations that attach to human rights. This conception enables the Bank to use the language of rights to envelope its work without necessarily introducing any serious

²³² UNGA, 'Report of the Special Rapporteur on Extreme Poverty and Human Rights' 70th Session (4 August 2015) UN Doc A/70/274.

²³³ *ibid* Par. 62.

²³⁴ *ibid*.

strategic changes which a pragmatic engagement with human rights would entail. This has obvious implications for the prospects of the RBAA with regard to the Bank.

In the first instance, in keeping with its practice on most other issues, the Bank may rechristen some of its current and emerging anticorruption policies and programmes as espousing the RBAA by expressing them in the language of rights. This could be done especially for policies and programmes that share common attributes with, and are based on similar principles as rights-based approaches to anticorruption. In fact, the contents of the Bank's World Development Report for 2017 show the imminence of this possibility. The report titled, 'Governance and the Law' encourages a rethink of 'governance for development' by promoting ideas like elite bargains, citizen engagement and collective action, all of which are based directly or indirectly on the principles of a RBAA.²³⁵ Considering the Bank's history of co-opting alternative and critical discourses and also reframing issues to bring them within the always expanding policies of the Bank, it is not improbable that, as the concept of a RBAA takes hold globally, the Bank will react by simply reframing these policies and programmes as evidencing such an approach.

The second possible scenario is that the Bank might eventually give in to pressure and articulate a comprehensive human rights policy within which the RBAA will be contained. In the last few decades, it has shown a propensity to evolve by responding to global economic and political developments, and the policies of other development institutions. The Bank's relatively recent involvement with issues of governance and anticorruption is testament to this fact. It is therefore foreseeable that the Bank may move from its incoherent approach to human rights to a more direct comprehensive

²³⁵ World Bank, *World Development Report 2017: Governance and the Law* (World Bank, Washington D. C 2017) 196-241.

strategy. How and when this might happen will of course, depend on how entrenched the RBAA becomes, especially at the global level.

Apart from these institutions, other organisations that have explored different elements the RBAA include Transparency International,²³⁶ USAID,²³⁷ and the defunct International Council on Human Rights Policy which undertook arguably the most in-depth academic analysis of the approach with useful insights and recommendations for implementation.²³⁸ However, as noted above, the most decisive steps towards operationalising the approach have been taken under the OHCHR, particularly by the HRC.

7.4.2 Specific Role of the Office of the United Nations High Commissioner for Human Rights (OHCHR) - Particularly the Human Rights Council (HRC) - Towards Operationalising the Rights-Based Approach to Anticorruption

The discussion here is divided into three phases. The first is on the actions taken by the predecessor to the HRC, the Commission on Human Rights, in exploring the relationship between corruption and human rights. The second relates to initiatives driven by the OHCHR in this regard between the conclusion of those actions and when

²³⁶ See Transparency International, 'Human Rights and Corruption' (2008) Working Paper 05/2008

<http://www.transparency.org/whatwedo/publication/working_paper_no.5_2008_human_rights_and_corruption> accessed 20 April 2017.

Transparency has also been actively engaged in contributing to policy discussions on the approach by the Human Rights and the European Union Parliament.

²³⁷ See USAID, 'USAID Strategy on Democracy, Human Rights and Governance' (June 2013) <<https://www.usaid.gov/democracy-human-rights-and-governance-strategy>> accessed 20 April 2017.

²³⁸ See International Council on Human Rights Policy and Transparency International, *Integrating Human Rights in the Anti-Corruption Agenda* (ICHRP 2010); International Council on Human Rights Policy, *Corruption and Human Rights: Making the Connection* (ICHRP 2009).

HRC was established and carried on exploring the issue. The third looks at the efforts and recommendations by the HRC up until date.

7.4.2.1 Initial Efforts under the Previous Commission on Human Rights

Even though there had previously been nuanced references to the relationship between corruption and human rights within the UN human rights system, the most direct action in this regard was undertaken by the Commission on Human Rights. In 2003, its Sub-Commission on the Protection and Promotion of Human Rights appointed a Special Rapporteur, Christy Mbonu to prepare a comprehensive study on corruption and its impact on the full enjoyment of human rights generally and particularly economic, social and cultural rights.²³⁹ Following the endorsement of this decision by the Commission,²⁴⁰ the Special Rapporteur went on to produce a working paper on the subject in 2003,²⁴¹ a preliminary report in 2004,²⁴² and a progress report in 2005.²⁴³ The mandate ended in 2006 when the Sub-commission was replaced by an Advisory Committee as the new HRC's expert advisory mechanism.

The work of the Special Rapporteur was important in drawing the attention of the UN human rights machinery to the need to consider the human rights implications of corruption. It also provided a preliminary framework within which to engage the issue

²³⁹ United Nations Commission on the Protection and Promotion of Human Rights Resolution 2003/106.

²⁴⁰ United Nations Commission on Human Rights Decision 2004/106.

²⁴¹ United Nations Commission on Human Rights, 'Working Report of the Special Rapporteur, Ms. Christy Mbonu on Corruption and its Impact on the Full Enjoyment of Human Rights, in Particular, Economic, Social and Cultural Rights' 55th Session (14 May 2003) UN Doc E/CN.4/Sub.2/2003/18.

²⁴² United Nations Commission on Human Rights, 'Preliminary Report of the Special Rapporteur, Ms. Christy Mbonu on Corruption and its Impact on the Full Enjoyment of Human Rights, in Particular, Economic, Social and Cultural Rights' 55th Session (7 July 2004) UN Doc E/CN.4/Sub.2/2004/23.

²⁴³ United Nations Commission on Human Rights, 'Progress Report of the Special Rapporteur, Ms. Christy Mbonu on Corruption and its Impact on the Full Enjoyment of Human Rights, in Particular, Economic, Social and Cultural Rights' 57th Session (22 June 2005) UN Doc E/CN.4/Sub.2/2005/18.

of corruption and human rights at a crucial time when concern over corruption was taking a strategic place on the global stage. However, it did not go as far as considering practical ways of promoting and implementing a RBAA. Instead the reports dealt with precursory issues like the general nature of corruption, an overview of actions being taken against corruption at the time, the socio-economic, civil and political consequences of corruption in society, and how the existence of corruption in institutions like the judiciary, law enforcement agencies and political parties can have devastating effects on the enjoyment of human rights.

7.4.2.2 *Intermediate Actions Taken within the UN Human Rights System*

It is worth noting that whilst the work of the Special Rapporteur was ongoing, the OHCHR, at the request of the Commission on Human Rights organised a joint seminar with UNDP on good governance practices for the protection of human rights. The conference took place in Seoul in September 2004. Based on its proceedings, the OHCHR published, in 2007, a booklet on *Good Governance Practices for the Protection of Human Rights*.²⁴⁴ Even though reference is often made to this publication in discourses about human rights and anticorruption, this was not the direct specific focus of the publication. The publication did not specifically engage with the issue of the impact of corruption on human rights or the application of human rights principles and practices in addressing corruption. It only presented 21 case studies of governance reforms from different parts of the world that helped with the enjoyment of human rights. These cases highlighted issues like strengthening democratic

²⁴⁴ OHCHR, *Good Governance Practices for the Protection of Human Rights* (United Nations 2007).

institutions, improving service delivery, the rule of law and combating corruption. They confirmed the general premise that good governance is important for the protection of human rights. However, even with cases dealing specifically with corruption, there was no specific reference to the application of human rights principles or practices in anticorruption efforts.

Furthermore, in November 2006, OHCHR organised the United Nations Conference on Anti-Corruption Measures, Good Governance and Human Rights which took place in Poland.²⁴⁵ This conference served as a follow-up to the Seoul Conference and took place in response to Resolution 2005/68 of the Commission on Human Rights. It had in attendance representatives of States, national human rights institutions, IDIs, CSOs and anticorruption and human rights practitioners. Compared to the Seoul Conference, this conference dealt more specifically with the relationship between corruption and human rights, including the impact of corruption on human rights and how human rights principles and approaches can help in curbing corruption. Moreover, the conference was structured in a manner that led to the consideration of practical and concrete recommendations.²⁴⁶

In the follow-up to this conference, OHCHR is developing a guidebook on human rights and anticorruption for practitioners. This is being done in collaboration with UNDP and the United Nations Office on Drugs and Crime (UNODC) and is expected to provide the first comprehensive policy framework on the issue of a RBAA. Without necessarily pre-empting the content of this document, indications of what the policy of UN human

²⁴⁵ See OHCHR, 'United Nations Conference on Anti-Corruption Measures, Good Governance and Human Rights: 8-9 November 2006' <<http://www.ohchr.org/EN/Issues/Development/GoodGovernance/Pages/WarsawConference.aspx>> accessed 9 April 2017.

²⁴⁶ *ibid.*

rights machinery might be in this area can be gleaned from the more recent work of the HRC in this respect.

7.4.2.3 *More Recent Efforts of the Human Rights Council*

Following its establishment in 2006, the HRC has taken some definitive steps in promoting work on corruption and human rights. In 2011, the Council passed Resolution 18/13 which stressed the need for States to promote enabling environments for the prevention of human rights violations by, amongst other things, tackling corruption.²⁴⁷ In related moves, the Council has, through several resolutions, also highlighted the need for action in dealing with the negative impact of the non-repatriation of proceeds of illicit endeavours to their countries of origin on the enjoyment of human rights.²⁴⁸

Furthermore, in June 2012, Morocco issued a cross-regional statement on behalf of 132 States to the 20th session of the HRC. The statement expressed deep concern about the increasing negative impact of widespread corruption on the enjoyment of human rights through the weakening of institutions and erosion of public trust in governance, and the undermining of initiatives to improve the lives of citizens.²⁴⁹ The statement concluded by calling on the human rights and anticorruption movements to

²⁴⁷ UNHRC Res 18/13 (14 October 2011) UN Doc A/HRC/RES/18/13.

²⁴⁸ See UNHRC Res 17/23 (19 July 2011) UN Doc A/HRC/RES/17/23; UNHRC Res 19/38 (19 April 2012) UN Doc A/HRC/RES/19/38; UNHRC Res 22/12 (10 April 2013) UN Doc A/HRC/RES/22/12.

²⁴⁹ See text of statement at <http://www.ohchr.org/Documents/Issues/Development/GoodGovernance/Corruption/MoroccoStatementHRAndCorruption.pdf> accessed 9 April 2017.

work together to leverage on the close connection between anticorruption and human rights measures.

Subsequently, in March 2013, the Council convened a panel discussion on the negative impact of corruption on the enjoyment of human rights. The panel had representatives of OHCHR, Transparency International, the Committee on Economic, Social and Cultural Rights, UNDP and UNODC, amongst others. Its significant contributions included calling for the establishment of a mandate for a UN Special Rapporteur on corruption and human rights in the hope that this would go a long way in making corruption a standing issue on the agenda of the HRC.²⁵⁰ The view was also expressed that such a move would prove to be a meaningful and sustained approach to considering the issue.

Arguably the most significant step taken by the HRC in its current form came in June 2013 when it requested its expert Advisory Committee to submit a research-based study to the Council on the issue of the negative impact of corruption on the enjoyment of human rights and to make recommendations on how the Council and its subsidiary bodies should consider this issue.²⁵¹ Following a detailed consultative process which involved the issuing of questionnaires to states, human rights institutions, CSOs and academia,²⁵² the Advisory Committee submitted its final report to the HRC in January

²⁵⁰ See Annual Report of the United Nations High Commissioner for Human Rights and Reports of the Office of the High Commissioner and the Secretary General, (2013) A/HRC/23/26 <http://www.ohchr.org/documents/hrbodies/hrcouncil/regularsession/session23/a.hrc.23.26_en.pdf> accessed 21 February 2015.

²⁵¹ UNHRC Res 23/9 (20 June 2013) UN Doc A/HRC/RES/23/9.

²⁵² The report noted that the drafting group received a total of 73 responses to questionnaires issued for the purpose of drafting the report. Of these, 37 were from States, 16 from national human rights institutions, 14 from non-governmental or civil society organisations and 6 from international or regional institutions or academic institutions.

2015.²⁵³ Like most other mechanisms discussed in this work, the report began on the premise that corruption negatively impacts human rights. It looked at various ways in which a violation of human rights may occur because of corruption, by building on the various perspectives from which the issue had been considered.

More importantly, the report provided a more detailed examination than any document or measure before it, of the value of linking corruption to human rights for anticorruption efforts. Whilst decrying the limitations of a purely criminal perspective to addressing corruption, the report pointed out various ways a RBAA will enhance anticorruption efforts. These include moving victims to the centre of anticorruption efforts, providing an enhanced understanding of the responsibility of the state in dealing with corruption, leveraging on the shared principles between anticorruption and human rights efforts, and providing access to national, regional and international human rights monitoring mechanisms.

Most of these advantages have been explored in detail in preceding sections of this chapter. What is important here are the recommendations made by the Advisory Committee for operationalising the RBAA. In addition to a couple of conceptual recommendations, the Committee proposed the following steps:

- The use of the special procedures mechanism of the HRC through a special thematic mandate established to examine, monitor, advise and report on major phenomena of human rights violations caused by corruption. To augment this,

²⁵³ UNHRC, 'Final Report of Human Rights Council Advisory Committee on the Issue of the Negative Impact of Corruption on the Enjoyment of Human Rights' 28th Session 5 January 2015) UN Doc A/HRC/28/73.

every existing thematic and country mandate should also consider paying attention to the relationship between corruption and human rights.

- The consideration of corruption as a possible cause of human rights violations should be integrated into the universal periodic review mechanism. This is so that states can deal with the question of whether and to what extent, human rights violations are consequences of corruption. Furthermore, this will mean that actions taken by states against corruption are considered as means of improving the state of human rights under the review process.
- Specific attention should be paid to possible violations of human rights caused by corruption in the framework of the complaints procedure of the HRC. Where any such connection is found to exist, this should be indicated in the communication in question and the recommendations made.
- Finally, an inter-institutional approach should be adopted to create a dialogue between relevant UN bodies and other international institutions to share information and establish linkages between the work of such institutions. This should be done with a view to mutual consideration and integration of measures for a more effective anticorruption alliance.

At the 29th session of the Council in June 2015, member States adopted Resolution 29/11 on the negative impact of corruption on the enjoyment of human rights. In doing so, they took 'note with interest' of the final report of the HRC Advisory Committee on the issue, and encouraged cooperation between national anticorruption and human rights institutions. The HRC also encouraged the OHCHR and UNODC to exchange views on the subject. It further recommended existing mechanisms of the Council like

special procedures to consider the issue of corruption within their mandates, whilst also requesting the OHCHR to compile best practices of efforts to counter the negative impact of corruption on human rights.

This resolution therefore went no further than adopting the recommendations of the Advisory Committee. Considering this, and until the guidebook discussed above is published,²⁵⁴ or a clearer policy emerges from other sources, the recommendations of the Advisory Committee remain the most recent, authoritative and comprehensive indicator of the approach of the HRC in promoting a RBAA. Taking this and all the actions examined above into consideration, the next section looks at some conclusions and concerns with respect to the prospects of this approach within the broader context of anticorruption efforts in SSA.

7.5 Concerns Over the Prospects of the Rights-Based Approach to Anticorruption

Considering the obvious potential benefits of the RBAA, it should ordinarily be a welcome development to the anticorruption endeavour in countries in SSA. Amongst other things, the approach is expected to provide new avenues for bottom-up responses to corruption. The application of human rights principles should also provide impetus for existing and emerging citizen-led actions against corruption. Furthermore, the promise of integrating concerns about corruption into human rights monitoring and compliance mechanisms at various levels will undoubtedly benefit

²⁵⁴ This is the guidebook being prepared by OHCHR, UNODC and UNDP following the United Nations Conference on Anti-Corruption Measures, Good Governance and Human Rights.

anticorruption efforts. The same optimism applies to the fact that the approach focuses on providing remedies for victims of corruption who are unjustly ignored by the current anticorruption regime.

However, the proposals for its implementation raise a few concerns on whether these advantages will materialise. Firstly, they do not appear to have given much attention to developments in the field of anticorruption, especially in the last decade. Apart from cursory references to, and criticisms of the predominant criminal law approach to anticorruption, most recommendations on the RBAA do not consider the approach in the light of emerging trends in the field of anticorruption, like the good fit approaches to governance discussed earlier in section 7.1.2 of this chapter. The approach is therefore being introduced without properly assessing the realities of the extant anticorruption environment. The danger here is that, without properly situating the approach within current realities, it might end up disrupting or delegitimising efforts already underway on the ground. Moreover, taking stock of such realities will inform better policy and action by highlighting areas where the approach might prove more beneficial, especially in terms of building synergy with other bottom-up approaches. As the research throughout this work shows, the failure of the current anticorruption regime to make significant impact at the local level is attributable in part, to the fact that it ignored pre-existing anticorruption efforts in countries when introducing new reforms.²⁵⁵ It is important that this mistake is not repeated with the RBAA.

The second concern worth noting concerns the general framework at the international level within which the approach is being explored. The RBAA is fundamentally a

²⁵⁵ See Palin S. Ivanov, 'The Limits of a Global Campaign Against Corruption' in Sarah Bracking (ed), *Corruption and Development: The Anti-Corruption Campaigns* (Palgrave Macmillan 2007) 28-45; Alan Doig, Robert Williams and David Watt, *Measuring "Success" in Five African Anti-Corruption Commissions* (U4 Report 2005) 36.

bottom-up citizen-led response to corruption. Hence, the institutional structure - comprising the OHCHR, UNODC, UNDP, etc - under which the policy framework for the approach is to be introduced raises questions as to the true character of the policy that will eventually emerge and how it will be implemented. The RBAA is rightly supposed to be a framework that empowers civil society and citizens to act against corruption. These institutions - especially UNODC and UNDP to a lesser degree – are however, favourably structured to working with state institutions. There is therefore the danger of the approach being yet another tool in the arsenal of ineffective state anticorruption and human rights institutions, rather than one geared towards empowering citizens to hold state authorities accountable.

Moreover, the involvement of these institutions might lead to the formulation of yet another top-down policy expressed in the language of rights. The implementation of such a policy is likely to rob the RBAA of its emancipatory and empowering impact. More than that, it would also deprive the approach of its ability to be context-specific and not be based on a generic template of practices determined by IDIs.

Related to this concern is the emphasis on the role of anticorruption and human rights institutions for operationalising the RBAA. Various recommendations point to the need for these institutions to collaborate in pursuing this approach. Whilst the idea of collaboration itself evokes positive sentiments and is often encouraged in the field of development, there are serious reasons to question its place in the implementation of a RBAA. In the first place, as argued above, the RBAA is not essentially intended for institutional application as a development policy. Even though there is no harm in formal institutions taking cognisance of the human rights implications of corruption, the approach is historically and conceptually built for bottom-up citizen-based action.

Secondly, in view of the problems of anticorruption institutions and their documented ineffectiveness in addressing corruption, it is difficult to see how their collaboration with human rights institutions will make much difference. The general inefficiency of anticorruption institutions and especially the interference of political interests in their work are not issues that can be easily solved by a collaboration with human rights institutions. If anything, such collaboration which current proposals for the RBAA encourages, might provide a route through which the influence of politics in the work of anticorruption agencies might extend to human rights institutions. This will defeat one of the underlying purposes of the RBAA, to provide an alternative to the current institutional approach to addressing corruption with its attendant problems.

Hence, whilst the involvement of human rights institutions in implementing the RBAA is somewhat inevitable considering this is an approach built on human rights and, at least for now, is being promoted by the field of human rights, the emphasis on collaboration with anticorruption institutions appears inexpedient.

Apart from these concerns, there are further issues of whether anticorruption institutions have the necessary knowledge, organisational culture and manpower to properly and effectively assimilate human rights in their work. Not taking all these practical factors into consideration could mean that the potential of the RBAA might be - for want of a better expression - 'lost in collaboration and institutionalisation.'

Whilst the conversation in this section has focused on practical concerns about operationalising the RBAA, it is also worth noting that there are general questions about the overall usefulness of the application of human rights to development issues. These concerns range from those who argue that connecting human rights to development issues like anticorruption blunts the ability of human rights to serve as a

means of resistance to the economic and institutional framing of development,²⁵⁶ to those who question generally the efficacy and suitability of a western ideologically defined normative framework of human rights for the development aspirations of countries in the global South.²⁵⁷ These arguments need to also be taken into consideration in the evolving framing of the RBAA.

7.6 Conclusion

After years of propagating a top-down institutional approach for tackling corruption with negligible results, there is an emerging paradigm shift in anticorruptionism. The place of civil society and citizen engagement in dealing with corruption is slowly being moved from a supporting to a central role as alternative bottom-up anticorruption mechanisms. The RBAA lies at the intersection of this trend in the field of anticorruption and the development of rights-based approaches in the broader field of law and development.

In fact, looking at the evolution of the field of development in the last couple of decades, it can be said that its integration in anticorruption efforts was fated. Human rights have made unprecedented inroads into every possible development issue in the

²⁵⁶ See Morag Goodwin and Kate Rose-Sender, 'Linking Corruption and Human Rights: An Unwelcome Addition to the Development Discourse' in Martin Boersma and Hans Nelen (eds) *Corruption and Human Rights: Interdisciplinary Perspectives* (Intersentia 2010) 221-240.

²⁵⁷ Thomas W. Pogge, *World Poverty and Human Rights: Cosmopolitan Responsibilities and Reforms* (Polity Press 2008) 58-76; Sundhya Pahuja, 'Rights as Regulation: The Integration of Development and Human Rights' in Bronwen Morgan (ed), *The Intersection of Rights and Regulation: New Directions in Sociolegal Scholarship* (Ashgate 2007) 167-191.

last few decades, such that it was only a matter of time before it was applied to corruption and issues of governance generally.

For the approach to prove effective however, it is important to exercise caution in the use of language associated with the approach and the practical objective that drives its implementation. It is important that the institutions working towards introducing policies to operationalise the approach do not limit its conception to a set of new practices and actions based on human rights, whilst ignoring the emerging bottom-up good fit approaches in the field of anticorruption. The obvious parallels between these developments in both fields mean that the understanding of the RBAA needs to be broad enough to include all approaches that emphasise bottom-up, people-focused, context-specific, citizen-led actions against corruption.

At the other extreme is the danger of simply window-dressing certain bottom-up approaches to anticorruption without the necessary commitment to human rights principles. Such repackaging will devalue a fundamental component of the RBAA and therefore needs to be discouraged. The integrity of the approach must be maintained especially with respect its dual aspects as stated above. This is important, not just for achieving conceptual clarity, but also due to the practical implications of the approach that finally emerges from such clarity.

Finally, it is significant to determine at this stage, what the underlying objective of the RBAA is: is it to tackle corruption for the protection of human rights or to apply human rights principles and practices for the purpose of addressing corruption, or is it to do both? Ascertaining this at this stage is important because it will determine the type of policies and programmes that are proposed and implemented. If the objective is to tackle corruption for the protection of human rights, then human rights institutions will

be disposed to support any kind of action - including top-down institutional anticorruption mechanisms - provided this leads to or will potentially lead to the protection of human rights.²⁵⁸ Whilst there is no obvious problem with the outcome in such situations, it would mean that the language of rights would be applied to institutional mechanisms that have proven to be ineffective in dealing with corruption in most situations; the very reason that precipitated calls for alternative bottom-up mechanisms. This will make useless the very essence of the RBAA. In the long run, the ineffectiveness of these measures will also defeat the objective of protecting human rights.

However, where the objective is to apply human rights principles for addressing corruption, then the emphasis will of course, be on ensuring the application of bottom-up rights-based approaches in tackling corruption. This is clearly more aligned with the historical and functional objectives behind the introduction of a RBAA. Pursuing this objective will also serve the dual purpose of adding practical value to anticorruption efforts through new mechanisms, whilst also ultimately contributing to human rights as a natural outcome of the reduction of corruption and improvement of governance. It is therefore this objective that accords with the position and analysis in this work. It is hoped that it will also inform the work of the various institutions involved in efforts towards operationalising the RBAA.

The early indications do not show clearly which of these objectives informs the work of the HRC and other institutions promoting the RBAA. It would seem that both objectives are being pursued simultaneously based on the premise of the inherent

²⁵⁸ This is demonstrated by the tone of the publication of the OHCHR in 2007 which highlight a good number of institutional approaches to anticorruption that had a positive impact on human rights. See OHCHR (n 244).

mutually reinforcing nature of both objectives. Whilst this is fine in theory, the policies and programmes that are likely to emerge from such strategy are not likely to enhance the practical prospects of the RBAA.

Chapter Eight: CONCLUSION AND IMPLICATIONS

8.1 Conclusion

This thesis set out to examine the challenges and prospects of anticorruption efforts in countries in SSA, the experience of Nigeria serving as a case study. A robust approach was adopted in dealing with the subject, to provide a complete picture. This is evident in two respects. Firstly, the thesis reflects the perspective of both IDIs in terms of their approach to tackling corruption in the region, and the perspective of anticorruption efforts within countries. This reveals the policy and practical outcomes of the interface between the approach at the global stage and actions at country level in such a way that demonstrates the influence of the former on the latter. Secondly, the work looks at the past, examines the present and looks forward to the future. This enables an informed and thorough examination of the history, attributes and problems of efforts to address corruption in the region and the expectations of yet emerging reforms.

The various moments in the law and development movement - the vehicle for legal and institutional reforms in countries in the global South – provided the framework within which the discourse was undertaken. It was established that the first and second moments of law and development disregarded the need to deal with the incidence of corruption and its impact on development in countries in SSA. Chapter four looked at some of the reasons for this including the preoccupation with top-down transplantation of generic legal institutions from the global North without much attention to local contextual realities, and the overwhelming influence of IFIs in the

field of development with a resulting economic development emphasis. In the latter respect, corruption was ignored because it was considered a political issue and therefore dealing with it would have amounted to violating the apolitical mandate of these institutions. Other factors that informed the disregard of corruption were the dearth of empirical and systematic knowledge in the field of law and development about realities at the local level that would have informed the prioritisation of issues like corruption.

Despite this disregard of corruption at the international level, the experience of Nigeria shows that corruption was a serious challenge to development. Furthermore, successive governments since independence had put in place various initiatives to curb corruption during this period. Most of these efforts however proved largely unsustainable and unsuccessful. They were usually ad hoc and short term as determined by the government in office. Hence, they were changed quite frequently as the country experienced erratic changes in government in the first few decades after independence. Furthermore, the initiatives were formulated and implemented in a top-down, state-led structure with little decentralisation and citizen-led frameworks. And the initiatives were often used to achieve broader political objectives, including harassing and intimidating political opponents and in some cases, using the promise of addressing corruption as a premise to capture state power.

Against this backdrop, chapter five considered the rather drastic change in the approach to corruption in the third and current moment of law and development. In line with the mainstreaming of a more comprehensive approach to development that took place in the 1990s up to the turn of the century, corruption became a central focus

of global development discourse and practice. Led by the World Bank, IDIs became preoccupied with efforts to address the challenge of corruption in countries in the region. In less than a decade beginning from the mid 1990s, almost ten global and regional instruments on corruption were adopted and most IDIs, including bilateral donors put in place some form of policy or strategy targeted at addressing corruption. This change in approach - referred to as the rise of anticorruptionism - was also reflected by the emergence of CSOs with a focus on various aspects of corruption and an increased attention to corruption research in academia.

The rest of the chapter looked at the influence of this change in approach on anticorruption efforts at the country level. Here, the experience of Nigeria demonstrated that the rise of anticorruptionism brought about clear changes in the legal and institutional frameworks for addressing corruption. A good amount of laws specifically focused on corruption have been passed since the turn of the century. A couple of specialised anticorruption institutions - the EFCC and the ICPC - were also established, as were other complementary institutions and initiatives designed to implement broader governance reforms. However, these formal changes have had little practical impact in addressing the challenge of corruption. Compared to previous efforts to tackle corruption, the current regime suffers from the same problems of being largely top-down, state-led and generally inefficient. The various institutions and initiatives are also still very much subject to political interference and instrumentalism.

The thesis argued that the reason for this is that anticorruption reforms in the third moment were introduced without due regard to the realities in the country in terms of the pre-existing regime to address corruption and its challenges. Instead, the rise of

anticorruption - as evident in its historical foundations, underlying assumptions and implementation strategies - was a response to developments in global politics and economic policy that took place in the 1980s and 1990s. These included the failure of the SAPs initiated by the IMF and the World Bank in the 1980s and the end of the Cold War.¹ These factors occasioned a change of approach in international development that emphasised governance reforms, which eventually culminated in the anticorruption agenda. At an institutional level, the broader interpretation of the mandate of the Bank by its General Counsel, Ibrahim Shihata to accommodate governance as an economic issue² and James Wolfensohn's focus on tackling corruption during his tenure as president of the Bank were other factors that enabled the mainstreaming of anticorruption in international development discourse and efforts.³

Given this history, chapter six makes the point that anticorruption efforts continue to respond to the dictates of its neoliberal ideological and institutional foundations. Hence, even though a lot has been done in terms of anticorruption reforms in the last two decades, not much has been achieved in confronting the long-standing challenges to effectively addressing corruption at country level. This is because reforms have been more responsive to standard long-standing 'top-down' ways of 'doing development' than the specific challenges of dealing with corruption in specific countries like Nigeria. The chapter examined various aspects of the current anticorruption agenda that attest to this. These include the commitment to a certain

¹ Howard Stein, *Beyond the World Bank Agenda: An Institutional Approach to Development* (The University of Chicago Press 2008) 38-51.

² Ibrahim F. I. Shihata, 'Corruption: A General Review with an Emphasis on the Role of the World Bank' (1997) 5(1) *Journal of Financial Crime* 12-29.

³ World Bank, *Voice for the World's Poor: Selected Speeches and Writings of the World Bank President James D. Wolfensohn, 1995-2005* (World Bank, Washington D.C 2005) 45.

general catalogue of reforms determined by IDIs, the continuing influence of IFIs, the widespread reliance on quantitative data and its role in influencing policy responses and actions of stakeholders, and the preference for the market over the state in current development ideology, which is reflected in the disproportionate focus on public sector corruption in comparison to corruption in the private sector.

Looking at the history of the law and development movement, these factors are reminiscent of the reasons why corruption was ignored in the first and second moments of the movement. The fact that they have persisted, despite the rise of anticorruptionism, demonstrates the rather superficial and circumstantial nature of the introduction of anticorruption into development discourse and practice. The reforms have been introduced in spite of, and not because of the challenges of addressing corruption in particular countries. This explains why they have had negligible impact in improving pre-existing efforts to deal with corruption. They do not get to the root of the realities and problems at the local level.

This situation has given rise to ever-increasing criticisms of the global anticorruption agenda and its failure to effectively deal with the problem of corruption in most countries, especially in SSA. A lot of the criticisms have centred around the commitment to a top-down, state-led institutional approach in dealing with corruption. As a result, there have been recommendations for the consideration of alternative bottom-up participatory anticorruption policies and strategies. To provide a comprehensive picture of the approach to corruption in law and development, chapter seven considered the rights-based approach to anticorruption (RBAA) as an example of such emerging bottom-up alternative policy response to addressing corruption.

With its foundations in the emergence of a rights-based approach to development since the beginning of the century and the more recent consideration of good fit perspectives on governance reforms, the chapter examined some of the ways in which the RBAA could improve on current efforts to curb corruption. Firstly, it can provide a more comprehensive way of looking at the obligation of the state to address corruption beyond the current criminal law focus of anticorruption efforts. By emphasising the negative impact of corruption on human rights, the RBAA would require state action with respect to anticorruption to be in line with its human rights obligations to respect, protect and fulfil human rights. This includes, amongst things, measures to punish private individuals and corporations that engage in corrupt acts that violate human rights; this being an issue not receiving deserved attention under the current anticorruption agenda. Secondly, the RBAA can provide conceptual and practical mechanisms through which citizens - individually and collectively - can play a more central role in anticorruption efforts. Through the application of a human rights perspective to principles like participation, transparency and accountability, citizens can become more active participants in dealing with corruption. Such citizen-led action against corruption is less likely to be affected by the problems of bureaucratic inefficiency and political interference that bedevil current top-down institutional approaches to anticorruption.

Two further arguments in favour of the RBAA were examined. First, the approach would lead to the consideration of corruption as a violation of human rights under the established and multi-faceted monitoring mechanisms of the UN and other regional and national human rights systems. This will provide a more comprehensive

understanding and highlight the multiple impacts of corruption in society. Secondly, it will make available a wide range of preventive and remedial mechanisms that characterise human rights monitoring to anticorruption practitioners and victims of corruption. In this respect, it was also pointed out that the focus on specific cases in human rights monitoring will deliver useful qualitative information that will be more beneficial for anticorruption efforts than the quantitative data that is currently prevalent in the sphere of anticorruption. Furthermore, the RBAA was discussed as means of providing remedy for victims of corruption who can seek redress in court for the violation of their rights arising from corruption. This is important considering the current regime of anticorruption pays little attention to the plight of those who suffer the consequences of corruption.

As with most development policies, whether the RBAA will prove effective in improving anticorruption efforts in the afore-mentioned ways or not depends on how it is implemented. Hence, the concluding sections of chapter seven looked at the prospects of actions being taken by various IDIs towards operationalising the approach. Specific attention was given to steps taken by OHCHR - especially by the HRC - in this regard. This is because, more than any other institution, it has shown the most enduring commitment towards operationalising the approach and taken the most decisive steps. Whilst recognising that the approach is still in a developing stage, the actions taken and recommendations made thus far raise some concerns, especially in terms of its prospects as an alternative to the existing anticorruption regime.

Significant amongst these are the fact that the policy framework for the approach is being put together at the global level by IDIs like other failed anticorruption reforms, and the emphasis on the roles of anticorruption and human rights institutions in operationalising the approach. What this points to is a real possibility that the RBAA might end up being implemented in a top-down nature through an institutional framework that has thus far proved ineffective in tackling corruption. This will rob the approach of its intended bottom-up citizen-based emancipatory effect and subject it to most of the problems of the current anticorruption regime.

From the broader perspective of the approach of law and development to corruption, this shows the entrenched nature of the problems of the movement and how - despite new conceptual insights and incidental changes in policy over time - its practical approach on the subject continues to be dictated by the same factors and bedevilled by the same problems. New thinking and approaches often end up being co-opted into the long-established top-down structure of formulating and implementing reforms that has held consistent despite decades of criticism. As the overall picture of this thesis shows, what little change has taken place has often been at a conceptual and formal level. There has been very little effect in terms of solving the practical problems of addressing corruption on the ground.

8.2 Implications of Thesis

From a situation of evident neglect to one of indirect engagement to the current state of prioritisation, the approach of the law and development movement towards

corruption has undergone drastic changes through its history. This thesis makes an original contribution to the understanding and ramifications of this history in a couple of ways. Firstly, it provides a comprehensive geneology of the approach of the law and development movement to corruption through its three moments. In doing so, it adopts an innovative approach to problematising corruption and anticorruption efforts. By using the various moments in law and development as an analytical framework, the thesis identified and elucidated the various ideological and institutional influences on the approach to corruption in international development from its post-war emergence to date.

Secondly, the thesis applied this framework to the case study of Nigeria, thereby providing a salient empirical policy context to the analysis of the approach to corruption in law and development. This showed the interplay between the global level and local level in seeking to address corruption during each moment. Understanding this dynamics is significant as it highlights the practical implications of the global effort on the continuing challenge of dealing with corruption in countries in SSA.

Building on this, and having examined the pitfalls of the approach to corruption in the past and present, this thesis has also provided a comprehensive background to and analysis of emerging trends in efforts to address corruption in SSA. In doing so, it examined the prospects of such trends for remedying the mistakes of the past and enhancing anticorruption efforts in the region.

From a practical policy perspective, the overriding implication of the research undertaken in this work is its revelation of how fundamentally inert the approach to

corruption in law and development has been over the years. Despite the initiation and implementation of new ideas, recommendations, policies and programmes, they have all been executed through the same strategy that has proven unsuccessful.

The failures of the anticorruption agenda therefore have to do more with the overall structure and strategy employed, rather than with the details of specific policies. This is where change is needed. The current situation where reforms are initiated and implemented from the top by IDIs with an obvious commitment to particular economic and political ideologies will, only by coincidence, lead to an outcome different from the current poor results. Even where programmes are supposedly initiated at the local level, support only comes from IDIs with conditions that require such programmes to be implemented within expected global standards of best practice. This is why even though much has been said about 'local ownership' and being sensitive to 'local contexts', the reality always belies that pretext when it comes to governance and anticorruption reforms. As aptly pointed out by Booth and Golooba-Mutebi:

Despite the frequently reported death of the Washington Consensus, international policy prescriptions for low-income Africa remain ideological, unimaginative and out of touch with reality. The intellectual capital and financial leverage Western donors and concessional lenders still exercise are dissipated on the promotion of a standard package of institutional 'best practices' which includes sound macroeconomic management, transparent public finances, free and fair elections, the rule of law, well-defined property rights and an arm's length relationship between private enterprises and the

*state. These are increasing grounds for regarding this approach as bankrupt.*⁴

What is therefore needed is an absolutely different way of addressing the challenge of corruption. This has to go beyond moving from a reliance on institutions to relying on civil society action; what has been referred to as stimulating demand for good governance and anticorruption.⁵ Provided this is still carried out through the current top-down structure, there is little evidence that it will make any significant difference. The Africa Power and Politics Programme (APPP) refers to the kind of fundamental change needed as ‘turning the ship around’. It suggests that that IDIs have to ‘change to meet the needs of development, and not the other way round’.⁶ In other words, reforms need to come genuinely from the local level.

In recent times, the need for such a change towards a whole different way of approaching governance and corruption challenges is gaining recognition from a variety of perspectives and institutions. Chapter seven looked at some of the terms and approaches that can be considered as part of this growing emphasis on bottom-up alternative frameworks. These include, ‘good fit’, ‘working with the grain’, ‘citizens against corruption’, ‘best fit’ and ‘collective action solutions’. Even institutions with a long-standing commitment to institution-building and directing reform policy from the

⁴ David Booth and Frederick Golooba-Mutebi, ‘Developmental Patrimonialism? The Case of Rwanda’ (2011) Africa Power and Politics Programme Working Paper 16, 1 <<http://www.institutions-africa.org/filestream/20110321-appp-working-paper-16-developmental-patrimonialism-the-case-of-rwanda-by-david-booth-and-frederick-golooba-mutebi-march-2011>> accessed 10 May 2017.

⁵ David Booth and Diana Cammack, *Governance for Development in Africa: Solving Collective Action Problems* (Zed Books 2013) 125-126; Brian Levy, ‘Governance and Economic Development in Africa: Meeting the Challenge of Capacity Building’ in Brian Levy and Sahr Kpundeh (eds), *Building State Capacity in Africa: New Approaches, Emerging Lessons* (World Bank 2004) 1-42.

⁶ Africa Power and Politics Programme, *Development as a Collective Action Problem: Addressing the Real Challenges of African Governance* (APPP, Overseas Development Institute 2012) 95-96.

top like the World Bank now appear to be moving in this direction. In its 2017 World Development Report, the Bank emphasised the need to move beyond institutional transplants to more localised solutions in the form of elite bargains, citizen engagement and collective action.⁷

This notwithstanding, the consideration of the RBAA under which the prospects of this trend were discussed in chapter seven shows how difficult it is to change how anticorruption reforms are carried out. Even though these new approaches emphasise the need for alternative bottom-up context-specific solutions to corruption, the entrenched structure of governance reforms and anticorruptionism threatens to rob them of their essence. The early indications are that these solutions are likely to become policy prescriptions themselves with IDIs and experts working on implementing them across countries and in different contexts. So, what can be done to avoid this?

Firstly, there needs to be an acceptance by the major IDIs involved in anticorruption and good governance reforms that they have got it wrong with the current and long-standing way of doing things. This needs to go beyond ‘not just this but also that’ arguments that try to defend extant policies, whilst simultaneously advocating for expansion to co-opt new and alternative discourses and recommendations. The problem is not with specific policies but rather with the overall structure of how things are done. There can hardly be any fundamental change without such recognition. This should also provide a moment for reflection, instead of the current situation where

⁷ World Bank, *World Development Report 2017: Governance and the Law* (The World Bank, Washington D.C 2017).

new ideas are emerging whilst old ones remain prevalent, making it difficult to map out what and where real change is taking place.

Secondly, there needs to be practical demonstration of a commitment to this new way of undertaking reforms that is now gaining recognition. Being reforms that emphasise local solutions, the first place to start logically is for IDIs to exercise restraint; what Putzel refers to as 'doing no harm'.⁸ Instead of being quick to develop policies that are supposed to be bottom-up from the top - based on preconceptions, ideological commitments and limited knowledge of realities on the ground - it might be best to allow time for such solutions to develop organically from the specific context of countries. Such restraint would require trusting that citizens in various countries understand and experience the negative impact of corruption. And that they are willing and able to stand up against corruption, at least to a certain extent before the involvement of international actors, if required. The law and development movement has always demonstrated an inherent lack of trust in the ability of local actors and citizens to understand and confront development challenges on their own. This needs to change.

Getting context-specific, local bottom-up solutions entails intensive skilled labour and a real local presence which most IDIs do not possess and may not be able or willing to afford.⁹ It might therefore be better to expend their financial and human resources and concentrate their efforts on tackling international dimensions of corruption like money laundering, tax evasion, illicit financial flows and similar challenges. These

⁸ James Putzel, *Conflict and Fragility: Do no Harm: International Support for Statebuilding* (OECD 2010).

⁹ Booth and Cammack (n 5) 138.

have been shown to be as harmful - if not more harmful - to the development of countries in the global South as public-sector corruption.¹⁰

This is not saying that there is no place for IDIs in dealing with corruption in individual countries. It however points to the need to ensure that the emerging paradigm for an alternative way of addressing corruption departs from old ways of doing things that have proven ineffective. The development of anticorruption reforms has been top-heavy and bottom-light for too long, despite the academic and institutional rhetoric suggesting otherwise. A lot of the research itself that informs policy - like the policies themselves - is undertaken by research institutions and academics that are usually based outside SSA. Most experts who assess corruption and governance in countries in the region are also based outside the region. The whole system is such that even the learning on how to improve current efforts is inevitably taking place at the international level in locations and institutions dispersed from the countries where practical results are intended for and needed.

For the RBAA to make a real difference in addressing corruption in countries in SSA, the emphasis must be on ensuring that it is initiated, not just implemented, from the local level.

In Nigeria, there are indications of positive prospects for a RBAA in addressing corruption. Landell-Mills' work referred to in chapter seven demonstrated the impact

¹⁰ See Global Financial Integrity, *Illicit Financial Flows to and From Developing Countries: 2005-2014* (Global Financial Integrity, Washington, D.C 2017). Such international dimensions of corruption are also intertwined with corruption within countries in terms of enabling the latter. If IDIs therefore focus more on issues like money laundering, tax evasion and illicit financial flows, it might have as much impact on development in countries in SSA and the global South generally, as current efforts directed at public sector corruption.

being made by projects designed and implemented by local CSOs.¹¹ The enactment of the Freedom of Information Act also provides an essential infrastructure for the success of the approach. The judicial decisions on rights-based litigation examined in this work shows promise too. Even though they were reached by a regional court, recent developments mean that local courts now have a framework within which to provide remedy to victims of corruption. The Administration of Criminal Justice Act 2015 for instance, provides that judges take into consideration the provision of compensation to victims of crimes like corruption when passing judgement.¹²

There is therefore a clear potential for bottom-up solutions to addressing corruption. The role of the government has to move more towards providing the framework for such approaches to thrive. The state-centric institutional approach needs to be replaced with the state playing an enabling role for rights-based approaches which should become central to addressing corruption. All emerging research and ideas point towards this as the more pragmatic solution to dealing with corruption.

The implementation, from the perspective of IDIs, is however where progress remains slow. Even though there is a recognition of this fact, there is still a lukewarm attitude towards committing fully to it, by abandoning the old top-down model of anticorruption reforms.¹³ There is a need for a dialogue amongst IDIs on this new vision that would

¹¹ Pierre Landell-Mills, *Citizens Against Corruption* (Partnership for Transparency Fund 2013) 159-162. For more on the impact made by this CSO in Nigeria and other CSOs around the world, see discussion in section 7.1.2 above.

¹² See Sections 319-325, 336 & 342 of the Administration of Criminal Justice Act 2015. A similar position is also stated in Paragraph 9 of the Federal High Court (Corruption and Related Offences) Sentencing Guidelines and Practice Direction 2015.

¹³ For instance, a 2009 report showed that even though the World Bank has a long-stated commitment to supporting demand for good governance by engaging with CSOs, only 40 per cent of its country assistance strategies included demand-for-good-governance component in 2007/2008. Also, the Bank's recent Multi-Donor Trust Fund in support of the Global Partnership for Social Accountability was allocated only US\$5 million annually, even though estimates show that US\$500

hopefully build the needed consensus and commitment on the right strategy to operationalise the RBAA

million was more likely to give the impetus to make a difference. See Vinay Bhargava, Kit Cutler and Daniel Ritchie, *Stimulating the Demand for Good Governance: An Agenda for Enhancing the Role of the World Bank* (Partnership for Transparency Fund 2009).

BIBLIOGRAPHY

Books and Articles

Aceves WJ, 'Actio Popularis - The Class Action in International law' (2003) University of Chicago Legal Forum 353-402

Adamolekun L, John Erero and Basil Oshionebo, "Federal Character" and Management of the Federal Civil Service and the Military' (1991) 21(4) Publius 75-88

Aduda GT, *Budget Monitoring and Price Intelligence Unit (Due Process): A Mechanism for Combating Corruption in Infrastructure Delivery in Nigeria* (Partnering to Combat Corruption Series, WEDC, Loughborough University UK 2007)

Afolabi MO, 'A Bibliography of the Nigerian Governments' Commissions of Inquiry Reports and Accompanying White Papers From 1920 to 1986' (1993) 20 Government Publications Review 297-358

Akcaay S, 'Corruption and Human Development' (2006) 26(1) Cato Journal 29-48

Akinwale A, *Public Administration and Personnel Management in Nigeria* (Spectrum Books Ltd 2007)

Alston P, 'Making Space for New Human Rights: The Case of the Right to Development' (1988) 1 Harvard Human Rights Yearbook 3-40

Alston P, 'Ships Passing in the Night: The Current State of the Human Rights and Development Debate Seen Through the Lens of the Millennium Development Goals' (2005) 27(3) Human Rights Quarterly 755-829

Ameh OJ and Ogundare O, 'Impact of Due Process on Construction Projects in Nigeria' (2013) 4 (1) Journal of Building Performance 13-23

Andersson S and Heywood PM, 'The Politics of Perception: Use and Abuse of Transparency International's Approach to Measuring Corruption' (2009) 57 Political Studies 746-767

Andreski S, 'Kleptocracy or Corruption as a System of Government' in Stanislaw Andreski, *The African Predicament; A Study in the Pathology of Modernisation* (Atherton 1968)

Andreski S, *The African Predicament: A Study in the Pathology of Modernisation* (Michael Joseph 1968)

Anoruo E and Braha H, 'Corruption and Economic Growth: The African Experience' (2005) 7(1) *Journal of Sustainable Development in Africa* 43-55

Apter DE, *Rethinking Development: Modernization, Dependency, and Postmodern Politics* (SAGE Publications 1987)

Austine E, Charles MV and Raymond AO, 'Corruption in Nigeria: A Historical Perspective' (2013) 3(16) *Research on Humanities and Social Science* 19-26

Baderin MA, 'Law and Development in Africa: Towards a New Approach' (2011) 1 (1) *NIALS Journal of Law and Development* 1-45

Bamidele O, Olaniyan AO and Ayodele B, 'Seized by Sleaze: The Siege of Corruption and a Search for Workable Options in Nigeria' (2015) 90(1) *Int'l social Science Review* 1-26

Banjo A, 'Public Sector Reforms in Nigeria: 1999-2009' in Shikha Vyas-Doorgapersad, Lukamba-Muhiya and Ernest Peprah Ababio (eds) *Public Administration in Africa: Performance and Challenges* (Routledge 2013) 83-96

Barber BR, *Strong Democracy: Participatory Politics for a New Age* (University of California Press 1984)

Bardhan P, 'Corruption and Development: A Review of Issues' (1997) 35 *Journal of Economic Literature* 1320-1346

Bardhan P, *Scarcity, Conflicts, and Cooperation: Essays in the Political and Institutional Economics of Development* (MIT Press 2005)

Barnerjee A, 'A Theory of Misgovernance' (1997) 112(4) *The Quarterly Journal of Economics* 1289-1332

Bayley DH, 'The Effect of Corruption in a Developing Nation' (1966) 19 *Western Political Quarterly* 719-732

Bedjaoui M, *Towards a New International Economic Order* (Holmes & Meier 1979)

Beeson M and Islam I, 'Neoliberalism and East Asia: Resisting the Washington Consensus' (2005) 41(2) *The Journal of Development Studies* 197-219

Berkowitz D, Pistor K and Richard JF, 'Economic Development, Legality, and the Transplant Effect' (2003) 47 *Eur Econ. Rev* 165-195

Bernstein H, 'Agricultural 'Modernisation' and the Era of Structural Adjustment: Observations on Sub-Saharan Africa' (1990) 18 (1) *The Journal of Peasant Studies* 3-35

Berry JM, Portney KE and Thompson K, *The Rebirth of Urban Democracy* (The Brookings Institution 1993)

Bhargava V (ed), 'Curing the Cancer of Corruption' in *Global Issues of Global Citizens: An Introduction to key Development Challenges* (World Bank 2006) 341-370

Bhargava V, Cutler K and Ritchie D, *Stimulating the Demand for Good Governance: An Agenda for Enhancing the Role of the World Bank* (Partnership for Transparency Fund 2009)

Blake RC, 'The World Bank's Draft Comprehensive Development Framework and the Micro-Paradigm of Law and Development' (2000) 3(1) *Yale Human Rights and Development Journal* 159-189

Booth D and Cammack D, *Governance for Development in Africa: Solving Collective Action Problems* (Zed Books Ltd 2013)

Booth D, 'Introduction: Working with the Grains? Africa Power and Politics Programme' in Richard Crook and David Booth (eds), 'Working with the Grain? Rethinking African Governance' (2011) 42(2) *IDS Bulletin* 1-10

Booth D, *Development as a Collective Action Problem: Addressing the Real Challenges of African Governance* (Overseas Development Institute 2012)

Bowen GA, 'Document Analysis as a Qualitative Research Method' (2009) 9(2) *Qualitative Research Journal* 27-40

Bratton M, 'The Politics of Government-NGO Relations in Africa' (1989) 17 *World Development* 569-587

Bresser-Pereira LC, 'The New Developmentalism and Conventional Orthodoxy' (2006) 20(3) *Sao Paulo Em Perspectiva* 5-24

Bukovansky M, 'Corruption Rankings: Constructing and Contesting the Global Anti-Corruption Agenda' in Alexander Cooley and Jack Snyder (eds), *Ranking the World: Grading States as a Tool of Global Governance* (CUP 2015) 60-84

Burg EM, 'Law and Development: A Review of the Literature and Critique of "Scholars in Self-Estrangement"' (1977) 25 *American Journal of Comparative Law* 492-530

Campos JE, Lien D and Pradhan S, 'The Impact of Corruption on Investment: Predictability Matters' (1999) 27(6) *World Development* 1059-1067

Cao L, 'Law and Economic Development: A New Beginning? Review of Anthony Carty (ed) *Law and Development*' (1997) 32 *Texas Intl LJ* 545-559

Carmona MS, and Bacio-Terracino J, 'Corruption and Human Rights: Making the Connection' in Martine Boersma and Hans Nelen (eds.) *Corruption & Human Rights: Interdisciplinary Perspectives* (Intersentia 2010) 25-49

Carothers T (ed), 'The Problem of Knowledge' in *Promoting the Rule of Law Abroad: In Search of Knowledge* (Carnegie Endowment for International Peace 2006) 15-28

Carothers T (ed), 'The Rule of Law Revival' in *Promoting the Rule of Law Abroad: In Search of Knowledge* (Carnegie Endowment for International Peace 2006) 3-13

Carr I, 'Corruption, The Southern African Development Community Anti-Corruption Protocol and the Principal-Agent-Client Model' (2009) 5(2) *International Journal of Law in Context* 147-177

Chabal P, 'The African Crisis: Context and Interpretation' in Terence Ranger and Richard Werbner (eds), *Postcolonial Identities in Africa* (Zed Books 1996)

Channell W, 'Lessons Not Learned About Legal Reform, in *Promoting the Rule of Law Abroad: In Search of Knowledge* (Thomas Carothers ed. Carnegie Endowment for International Peace 2006) 137-160

Chêne M and Dell G, 'UNCAC and the Participation of NGOs in the Fight Against Corruption' (U4 Expert Answer 2008)

Cheru F, *The Silent Revolution in Africa: Debt, Development and Democracy* (Zed Books 1989)

Chukwuemeka E, Ugwuanyi BJ and Ewuim N, 'Curbing Corruption in Nigeria: The Imperatives of Good Leadership' (2012) 6(3) *African Research Review* 338-358.

Clower RW, *Growth Without Development: An Economic Survey of Liberia* (North-Western University Press 1966)

Cohler AM and Ors. (eds and trs), *Charles De Secondat and Baron De Montesquieu, The Spirit of the Laws: Book 1* (CUP 1989)

Cooper RN and Lawrence RZ, 'The 1972-75 Commodity Boom' (1975) 3 *Brookings Papers on Economic Activity* 671-723

Cornwall A and Nyamu-Musembi C, 'Putting the "Rights-Based Approach" to Development into Perspective' (2004) 25(8) *Third World Quarterly* 1415-1437

Crook RC and Booth D (eds), 'Working with the Grain? Rethinking Africa Governance' (2011) 42(2) *IDS Bulletin* 1-10

Cuervo-Cazurra A, 'Better the Devil You Don't Know: Types of Corruption and FDI in Transition Economies' (2008) 14 *Journal of International Management* 12-27

Dahl RA, *A Preface to Democratic Theory* (University of Chicago Press 1956)

Dañino R, 'The Legal Aspects of the World Bank's Work on Human Rights: Some Preliminary Thoughts' in World Bank, *The World Bank Legal Review: Law, Equity and Development* (Vol 2, Martinus Nijhoff Publishers 2006) 295-324

Darrow M, *Between Light and Shadow: The World Bank, the International Monetary Fund and International Human Rights Law* (Hart Publishing 2006)

David R, 'A Civil Code for Ethiopia: Considerations on the Codification of the Civil Law in African Countries' (1963) 37 *Tulsa. Law Review* 187-197

Davis KE and Trebilcock MJ, 'The Relationship between Law and Development: Optimists Versus Skeptics' (2008) 56 *American Journal of Comparative Law* 895-946

Davis KE, 'The Prospects for Anti-Corruption Law: Optimists Versus Skeptics' (2012) *Hague J. on the Rule of Law* 319-336

De Beco G, 'Monitoring Corruption from a Human Rights Perspective' (2011) 15(7) *The International Journal of Human Rights* 1107-1124

De Feyter K, *World Development Law: Sharing Responsibility for Development* (Intersentia 2001)

DeBacker JM, Heim BT and Tran A, 'Importing Corruption Culture from Overseas: Evidence From Corporate Tax Evasion in the United States' (2015) 117(1) *Journal of Financial Economics* 1222-138

Dike VE, *Nigeria and the Politics of Unreason: A Study of the Obasanjo Regime* (Adonis and Abbey Publishers 2003)

Du Plessis P, *Borkowski's Textbook on Roman Law* (3rd edn, OUP 2015)

Duckett J, 'Bureaucrats in Business, Chinese Style: The Lessons of Market Reform and State Entrepreneurialism in People's Republic of China' (2001) 29 *World Development* 23-37

Dudley Seers, *The Meaning of Development* (Institute of Development Studies 1969)

Easterly W, 'The Lost Decades: Developing Countries' Stagnation in Spite of Policy Reform 1980-1998' (2001) 6(2) *Journal of Economic Growth* 135-157

Easterly W, *The White Man's Burden: Why the West's Efforts to Aid the Rest Have Done So Much Ill and So Little Good* (OUP 2006)

Effros RC, 'The World Bank in a Changing World: The Role of Legal Construction' (2001) 35 *Int'l Law* 1341-1344

Enweremadu D, 'Nigeria's Quest to Recover Looted Assets: The Abacha Affair' (2013) 2 *African Spectrum* 51-70

Escobar A, 'Anthropology and Development' (1997) 154 *International Social Science Journal* 497-515

Escobar A, *Encountering Development: The Making and Unmaking of the Third World* (Princeton University Press 2011)

Evans P, 'Development as Institutional Change: The Pitfalls of Monocropping and the Potentials of Deliberation' (2004) 38(4) *Studies in Comparative International Development* 30-52

Falola T, *The History of Nigeria* (Greenwood 1999)

Falola T and Heaton MM, *A History of Nigeria* (CUP 2008)

Fayomi IO, 'Public Procurement and Due Process Policy in Nigeria: Thrust, Prospects and Challenges' (2013) 1(4) *Peak Journal of Social Sciences and Humanities* 39-45

Ferguson J, *The Anti-Politics Machine: "Development", Depoliticisation and Bureaucratic Power in Lesotho* (CUP 1990)

Finnegan R, 'Using Documents' in Roger Sapsford and Victor Jupp, *Data Collection and Analysis* (2nd Edn, Sage Publications Ltd 2006) 138-151

Fisman R and Miguel E, 'Corruption, Norms, and Legal Enforcement: Evidence From Diplomatic Parking Tickets' (2007) 115(6) *Journal of Political Economy* 1020-1048

Foucault M, 'Politics and the Study of Discourse' in Graham Burchell, Colin Gordon and Peter Miller (eds), *The Foucault Effect: Studies in Governmentality* (The University of Chicago Press 1991) 53-72

Friedman LM, 'Legal Culture and Social Development' (1969) 4 *Law and Society Review* 29-40

Friedman LM, 'On Legal Development' (1969) 24 Rutgers Law Review 11, 52-53

Fukuyama F, *State-Building: Governance and the World Order in the 21st Century* (Cornell University Press 2004)

Gallagher M, *Rent-Seeking and Economic Growth in Africa* (Westview Press Inc. 1991)

Gathii J, 'International Law and Eurocentricity' (1998) 9 European Journal of International Law 184-205

Ginsburg T, 'Does Law Matter for Economic Development? Evidence from East Asia' (2000) 34 Law and Society Rev 829-856

Glaser BG, *Basics of Grounded Theory Analysis: Emergency Vs. Forcing* (Sociology Press 1992)

Gonzalez de Asis M, *Anticorruption Reform in Rule of Law Programs* (World Bank 2006)

Goodwin M, and Rose-Sender K, 'Linking Corruption and Human Rights: An Unwelcome Addition to the Development Discourse' in Martine Boersma and Hans Nelen (eds), *Corruption and Human Rights: Interdisciplinary Perspectives* (Intersentia 2010) 221-240

Gray CW and Kaufmann D, 'Corruption and Development' (1998) 35 Finance and Development 7-10

Grindle MS, *Going Local: Decentralisation, Democratisation and the Promise of Good Governance* (Princeton University Press 2007)

Grindle MS, 'Governance Reform: The New Analytics of Next Steps' (2011) 24(3) Governance 415-418

Gulrajani N, 'The Art of Fine Balances: The Challenge of Institutionalising the Comprehensive Development Framework Inside the World Bank' in Diane Stone and Christopher Wright (eds), *The World Bank and Governance: A Decade of Reform and Reaction* (Routledge 2006) 48-66

Gupta S, Davoodi H and Alonso-Terme R, 'Does Corruption Affect Income Inequality and Poverty?' (2002) 3(1) Economics of Governance 22-45

Hanna R et al., *The Effectiveness of Anti-Corruption Policy: What Has Worked, What Hasn't and What We Don't Know: A Systemic Review* (EPPI Centre 2011)

Harris D, *Cases and Materials on International Law* (7th end. Sweet and Maxwell 2010)

Hart HLA and Honoré AM, *Causation in the Law* (Oxford, Clarendon Press 1959)

Hatchard J, 'Adopting a Human Rights Approach Towards Combating Corruption' in Martine Boersma and Hans Nelen (eds), *Corruption and Human Rights: Interdisciplinary Perspectives* (Intersentia 2010) 7-23

Hauserman B, 'Review Essay – Exploring the New Frontiers of Law and Development. Reflections on Trubek/Santos eds., *The New Law and Economic Development* (2006)' (2007) 8 (6) German Law Journal 533-547

Hawthorne OE, *Do International Corruption Metrics Matter: The Impact of Transparency International's Corruption Perceptions Index* (Lexington Books 2015)

Hawthorne OE, *Do International Corruption Metrics Matter: The Impact of Transparency International's Corruption Perceptions Index* (Lexington Books 2015)

Honoré AM, 'Causation and Remoteness of Damage' in A. Tunc (ed), *International Encyclopaedia of Comparative Law*, (Tübingen, JCB Mohr 1983) ch. 7

Huntington SP, *Political Order in Changing Societies* (Yale University Press 1968)

Ivanov PS, 'The Limits of a Global Campaign Against Corruption' in Sarah Bracking (ed), *Corruption and Development: The Anti-Corruption Campaigns* (Palgrave Macmillan 2007) 28-45

Jacobs JB, 'Dilemmas of Corruption Control' in Stephen Kotkina and Andras Sajo (eds), *Political Corruption in Transition: A Sceptic's Handbook* (Central European University Press 2002) 81-90

James H, 'From Grandmotherliness to Governance: The Evolution of IMF Conditionality' (1998) 35(4) Finance and Development 44-47

Jayawickrama N, 'A Holistic Approach to Combating Corruption' (199) 25(2) Commonwealth Law Bulletin 658-679

Johnson M, 'Measuring the New Corruption Rankings: Implications for Analysis and Reform' in Arnold. J. Heidenheimer and Michael Johnson (eds), *Political Corruption: Concepts and Context* (Transaction Publishers 2001) 865-884

Johnson M, *Corruption, Contention and Reform: The Power of Deep Democratisation* (CUP 2014)

Johnson S et al., 'Why Do Firms Hide? Bribes and Unofficial Activity After Communism' (2000) 76 *Journal of Public Economics* 495-520

Joseph RA, 'Class, State and Prebendal Politics in Nigeria' (1983) 21 *Journal of Commonwealth & Comparative Politics* 21-38

Kabir MA, 'Anti-Corruption Conventions in Nigeria: Legal and Administrative Challenges' (2015) 9(4) *International Science Index, Law and Political Sciences* 1174-1184

Kapur D, Lewis JP and Webb R (eds), *The World Bank: Its First Half Century* (The Brookings Institution 1997)

Kauffmann D and Siegelbaum P, 'Privatisation and Corruption in Transition Economies' (1996) 50(2) *Journal of International Affairs* 419-458

Kaufmann D, 'Human Rights and Governance: The Empirical Challenge' in Philip Alston and Mary Robinson, *Human Rights and Development: Towards Mutual Reinforcement* (OUP 2005) 352-402

Kaufmann D, Kraay A and Mastruzzi M, 'Measuring Corruption: Myths and Realities' (World Bank, April 2007) 1-5

Kaufmann D, Kraay A and Mastruzzi M, 'The Worldwide Governance Indicators: Methodology and Analytical Issues' (2010) *Global Economy and Development* at Brookings 1-29

Kayizzi-Mugerwa S (ed), *Reforming Africa's Institutions: Ownership, Incentives and Capabilities* (United Nations University Press 2003)

Kennedy D, 'The International Anti-Corruption Campaign' (1999) 14 *Connecticut Journal of International Law* 455-465

Kennedy D, 'The "Rule of Law", Political Choices and Development Common Sense' in D. M. Trubek and A. Santos, *The New Law and Economic Development: A Critical Appraisal* (CUP, 2006) 95-173

Khan MH, 'Determinants of Corruption in Developing Countries: The Limits of Conventional Economic Analysis' in Susan Rose-Ackerman, *International Handbook on the Economics of Corruption* (Edward Elgar Publishing Ltd 2006)

Kinley D, 'Human Rights and the World Bank: Practice, Politics, and the Law' in World Bank, *The World Bank Legal Review: Law, Equity and Development* (Vol 2, Martinus Nijhoff Publishers 2006) 353-283

Kjærum M, 'State Reports', in G. Alfredsson et al. (eds.) *International Human Rights Mechanisms: Essays in Honour of Jakob Th. Moller* (Martinus Nijhoff Publishers 2001) 17-24

Kleinfeld R, 'Competing Definitions of the Rule of Law' in Thomas Carothers (ed) *Promoting the Rule of Law Abroad: In Search of Knowledge* (Carnegie Endowment for International Peace 2006)

Klitgaard R, *Controlling Corruption* (University of California Press 1988)

Klitgaard R, 'Gifts and Bribes' in Richard Zeckhauser (ed) *Strategy and Choice* (MIT Press 1991) 211-240

Krueger AO, 'The Political Economy of the Rent-Seeking Society' (1974) 64 (3) *American Economic Review* 291-303

Kukutschka RMB, *Building Political Will: Topic Guide* (Transparency International 2015)

Kumar CR, 'Corruption, Development and Good Governance: Challenges for Promoting Access to Justice in Asia' (2008) *Michigan State Journal of International Law* 475-572

Kumar CR, 'Corruption in India: A Violation of Human Rights; Promoting Transparency and the Right to Good Governance' (2015) 49(2) *UC Davis Law Review* 741-792

Lambert EU, 'Ethnicity and the Federal Character Policy in Nigeria' (2011) 8(1) *A Journal of Contemporary Research* 214-222

Lambsdorff JG, 'Causes and Consequences of Corruption: What do we Know from a Cross-Section of Countries?' in Susan Rose-Ackerman (ed), *International Handbook on the Economics of Corruption* (Edward Elgar Publishing Ltd 2006) 3-51

Landell-Mills P, *Citizens Action Against Corruption: Report from the Front Line* (Partnership for Transparency Fund 2013)

Langseth P, 'Measuring Corruption' in Charles Sampford et al., *Measuring Corruption* (Routledge 2016)

Laurence C, *Global Corruption: Money, Power and Ethics in the Modern World* (I.B. Tauris 2012)

Leff NH, 'Economic Development through Bureaucratic Corruption' (1964) 8(3) *American Behavioural Scientist* 8-14

Levy B, *Working with the Grain: Integrating Governance and Growth in Development Strategies* (OUP 2014)

Leys C, 'What is the Problem About Corruption?' in Arnold J. Heidenheimer (ed), *Political Corruption: Readings in Comparative Analysis* (Holt Rinehart and Winston 1970)

Maduagwu MO, 'Nigeria in Search of Political Culture: The Political Class, Corruption and Democratisation in Nigeria' in Alex Gboyega (ed), *Corruption and Democratisation in Nigeria* (Agbo Areo Publishers 1996)3-12

Mamdani M, *Citizen and Subject: Contemporary Africa and the Legacy of Late Colonialism* (Princeton University Press 1996)

Manji F, 'The Depoliticisation of Poverty' in Deborah Eade (ed), *Development and Rights* (Oxfam GB 1998) 12-33

Marquette H, 'Corruption Eruption: Development and the International Community' (1999) 20(6) *Third World Quarterly* 1215-1220

Marquette H, *Corruption, Politics and Development: The Role of the Bank* (Palsgrave Macmillan 2003)

Mason ES and Asher RE, *The World Bank Since Bretton Woods* (Brookings Institution Press 1974)

Mauro P 'Corruption and Growth' (1995) 110(3) *Quarterly Journal of Economics* 681-712

Mauro P, 'The Effects of Corruption on Growth, Investment, and Government Expenditure: A Cross-country Analysis' in Kimberly Ann Elliot (ed), *Corruption and the Global Economy* (Institute for International Economics 1997) 83-107

Mauro P, 'Corruption and the Composition of Government Expenditure' (1998) 69 *Journal of Public Economics* 263-279

McDonagh M, 'The Right to Information in International Human Rights Law' (2013) 13(1) *Human Rights law Review* 25-55

Meron T, 'State Responsibility for Violations of Human Rights' in *Proceedings of the 106th Annual Meeting* (American Society of International Law 1989)

Midgley J, *Social Development: The Development Perspective in Social Welfare* (SAGE 1995)

Mihevc J, *The Market Tells Them So: The World Bank and Economic Fundamentalism in Africa* (Zed Books 1995)

Mo PH, 'Corruption and Economic Growth' (2001) 29 *Journal of Comparative Economics* 66-79

Moore DB, 'Development Discourse as Hegemony: Toward an Ideological History - 1945-1995' in David B. Moore and Gerald J. Schmitz (eds), *Debating Development Discourse: Institutional and Popular Perspectives* (Macmillan Press 1995) 1-53

Moran TH, 'The United Nations and Transnational Corporations: A Review and a Perspective' (2009) 18(2) *Transnational Corporations* 91-112

Mosley P, Subasat T and Weeks J, 'Accessing Adjustment in Africa' (1995) 23(9) *World Development* 1459-1473

Moyo D, *Dead Aid: Why Aid is not Working and How There is Another Way for Africa* (Penguin Books 2009)

Murray R, *The African Commission on Human and Peoples' Rights and International Law* (Hart Publishing 2000)

Murungi JEN, 'Review of D. M. Trubek and A. Santos (eds), *The New Law and Economic Development: A Critical Appraisal*' (2008) 46 *Osgoode Hall Law Journal* 685-692

Myrdal G, 'Corruption: Its Causes and Effects' in Arnold J. Heidenheimer (ed), *Political Corruption: Readings in Comparative Analysis* (Holt Rinehart and Winston 1970) 540-545

Nafziger EW, 'From Seers to Sen: The Meaning of Economic Development' in George Mavrotas and Anthony F. Shorrocks (eds), *Advancing Development: Core Themes in Global Economics* (Palgrave Macmillan 2007) 50-62

Naím M, 'Corruption Eruption' (1995) 2 *Brown Journal of World Affairs* 245-261

Naím M, 'Missing Links: Bad Medicine' (2005) 147 *Foreign Policy* 95-96

Nelken D, 'Corruption and Human Rights: An Afterword' in Martine Boersma and Hans Nelen (eds.) *Corruption & Human Rights: Interdisciplinary Perspectives* (intersentia 2010) 241-261

Nettl JP and von Vorys K, 'The Politics of Development' (1968) 46 *Commentary* 52-54

Newton S, 'The Dialectics of Law and Development' in David M. Trubek and Alvaro Santos (eds) *The New Law and Economic Development* (CUP 2006) 174-202

North DC, *Institutions, Institutional Change and Economic Performance* (CUP 1990)

North DC, 'Institutions' (1991) 5(1) *The Journal of Economic Perspectives* 97-112

Nowicki M and Fialova Z, *Human Rights Monitoring* (Helsinki Foundation for Human Rights, Warsaw 2001)

Nwankwo BC, Ocheni S and Atakpa M 'A Review of the Contributions of Military Regimes to Social Mobilisation in Nigeria, 1966-1996' (2012) 3(2) *Journal of Arts, Science and Commerce* 24-32

Nye J, 'Corruption and Political Development: A Cost-Benefit Analysis' (1967) 2 *American Political Science Review* 417-427

Nyhart JD, 'The Role of Law in Economic Development' (1962) 1 *Sudan L.J and Reports* 394-410

O'Donnell G, 'Horizontal Accountability in New Democracies' in Andreas Schedler, Larry Diamond and Marc F. Plattner (eds), *The Self-Restraining State: Power and Accountability in New Democracies* (Lynne Rienner 1999) 29-52

O'Donnell GA, 'Why the Rule of Law Matters' (2004) 15 *Journal of Democracy* 32-46

Ocran, TM, *Law in Aid of Development*, (Ghana Publishing Corporation 1978)

Odeyemi TI, 'The Impact of Political Leadership and Corruption on Nigeria's Development since Independence' (2014) 7(5) *Journal of Sustainable Development* 240-253

Ogbeidi MM, 'Political Leadership and Corruption in Nigeria Since 1960: A Socio-Economic Analysis' (2012) 1(2) *Journal of Nigerian Studies* 1-25

Ogbu ON, 'Combating Corruption in Nigeira: A Critical Appraisal or the Laws, Institutions and the Political Will' (2010) 14(1) *Annual Survey of International and Comparative Law* 99-149

Ogujiuba K and Sola O, 'Medium Term Expenditure and Fiscal Management in Nigeria: A Review of the (2005-2008) Framework' (2013) 5(5) *Journal of Economics and Behavioural Studies* 291-306

Ohnesorge J, 'Developing Development Theory: Law and Development Orthodoxy and the Northeast Asian Experience' (2007) 28 University of Pennsylvania Journal of International Law 219-308

Olaiya TA, 'Interrogating the Non-Justiciability of Constitutional Directive Principles and Public Policy Failure in Nigeria' (2015) 8(3) Journal of Politics and Law 23-35

Olaniyan K, *Corruption and Human Rights Law in Africa* (Hart Publishing 2014)

Olken BA, 'Corruption Perceptions vs. Corruption Reality' (2009) 93(7-8) Journal of Public Economics 950-964

Omobowale AO, 'Disorder and Democratic Development: The Political Instrumentalisation of Patronage and Violence in Nigeria' (2011) 5(6) African Journal of Political Science and International Relations 283-286

Onimode B, Agubuzu LOC and Adedeji A, *African Development and Governance Strategies in the 21st Century: Looking Back to Move Forward* (Zed Books 2004)

Opara I, 'Nigerian Anti-Corruption Initiatives' (2007) 6 Journal of Int'l Business and Law 65-93

Otusanya OJ, 'Corruption as an Obstacle to Development in Developing Countries: A Review of Literature' (2011) 14(4) Journal of Money Laundering Control 387-422

Pace JP, 'The Development of Human Rights in the United Nations, its Control and Monitoring Machinery' (1998) 50 (158) International Social Science Journal 499-511

Pahuja S, 'Rights as Regulation: The Integration of Development and Human Rights' in Bronwen Morgan (ed), *The Intersection of Rights and Regulation: New Directions in Sociolegal Scholarship* (Ashgate 2007) 167-191

Perry-Kessaris A, 'Prepare Your Indicators: Economics Imperialism on the Shores of Law and Development' (2011) 7(4) International Journal of Law in Context 401-421

Peters A, *Corruption and Human Rights* (Basel Institute of Governance 2015)

Philip M, 'Conceptualising Political Corruption' in Arnold J. Heidenheimer and Michael Johnston (eds), *Political Corruption: Concepts and Contexts* (3rd edn, Transaction Publishers 2002) 41-58

Pistor K, 'The Standardization of Law and its Effect on Developing Countries' (2002) 50 Am. J. Comp. L 101-134

Pogge TW, *World Poverty and Human Rights: Cosmopolitan Responsibilities and Reforms* (Polity Press 2008)

Quane H, 'A Further Dimension to the Interdependence and Indivisibility of Human Rights? Recent Developments Concerning the Rights of Indigenous Peoples' (2012) 25 *Harvard Human Rights Journal* 49-83

Radelet S and Sachs J, 'The Onset of the East Asian Financial Crisis' in Paul Kraugman (ed.) *The Currency Crisis* (University of Chicago Press 2000) 105-161

Ranis G, 'The World Bank Near the Turn of the Century' in Albert Berry, Roy Culpeper and Francis Stewart (eds), *Global Development Fifty Years After Bretton Woods* (Palsgrave Macmillan 1997) 72-89

Razafindrakoto M and Roubaud F, 'How Far Can We Trust Expert Opinions on Corruption? An Experiment based on Surveys in Francophone Africa', in Transparency International, *Global Corruption Report 2005* (Pluto Press 2005) 292-295

Rigg J, *An Everyday Geography of the Global South* (Routledge 2007)

Rist G, *The History of Development: From Western Origins to Global Faith* (Zed Books 1997)

Rittich K, 'The Future of law and Development: Second-Generation reforms and the Incorporation of the Social' in D. M Trubek and A. Santos, *The New Law and Economic Development: A Critical Appraisal* (CUP 2006) 203-300

Rodrik D, 'Second-Best Institutions' (2008) 98(2) *American Economic Review* 100-104

Romer P, 'New Goods, Old Theory and the Welfare Costs of Trade Restrictions' (1994) 43(1) *Journal of Development Economics* 5-38

Rose-Ackerman S, 'The Economics of Corruption' (1975) 4(2) *Journal of Public Economics* 187-203

Rose-Ackerman S, *Corruption: A Study in Political Economy* (Academic Press 1978)

Rose-Ackerman S and Stone AHW, 'The Costs of Corruption for Private Business: Evidence from World Bank Surveys' (World Bank 1996)

Rose-Ackerman S, 'The Role of the World Bank in Controlling Corruption' (1997-1998) 29 *Law and Policy in International Business* 93-114

Rose-Ackerman S, *Corruption and Government: Causes, Consequences and Reform* (CUP 1999)

Rose-Ackerman S, 'Political Corruption and Democratic Structure' in Arvind K. Jain (ed), *The Political Economy of Corruption* (Routledge 2001) 35-62

Rostow WW, *The Stages of Economic Growth: A Non-Communist Manifesto* (CUP 1960)

Santiso C, *Governance Conditionality and the Reform of Multilateral Development Finance: The Role of the Group of Eight* (University of Toronto Press 2002)

Santos A, 'The World Bank's Uses of the "The Rule of Law" Promise in Economic Development' in David. M. Trubek and Alvaro Santos (eds), *The New Law and Economic Development: A Critical Appraisal* (CUP 2006) 253-300

Savant KP, 'The Negotiations of the United Nations Code of Code on Transnational Corporations' (2015) 16 *The Journal of World Investment and Trade* 11-87

Schatz F, 'Fighting Corruption with Social Accountability: A Comparative Analysis of Social Accountability Mechanisms' Potential to Reduce Corruption in Public Administration' (2013) 33(3) *Public Administration and Development* 161-174

Schatz SP, 'Structural Adjustment in Africa: A Failing Grade So Far' (1994) 32(4) *The Journal of Modern African Studies* 679-692

Schedler A. 'Conceptualising Accountability' in Andreas Schedler, Larry Diamond and Marc F. Plattner (eds), *The Self-Restraining State: Power and Accountability in New Democracies* (Lynne Rienner 1999) 13-28

Schiemann K, 'Locus Standi' (1990) *Public Law* 342; W. McCalla, 'Practice and Procedure: Locus Standi' (1979-1981) *Advocacy Quarterly* 325-330

Schmitz GJ, 'Democratisation and Demystification: Deconstructing "Governance" as a Development Paradigm' in David B. Moore and Gerald J. Schmitz (eds), *Debating Development Discourse: Institutional and Popular Perspectives* (Macmillan Press Ltd 1995) 54-90

Seabrook J, *The Race for Riches: The Human Cost of Wealth* (Marshall Pickering 1988)

Seers D, 'The Meaning of Development' (1969) *Institute of Development Studies Communication* 44, 1-26

Seidman R, 'Law and Economic Development in Independent, English-Speaking Sub-Saharan Africa' (1966) *Wisconsin L. Rev.* 999-1027

Seidman R, 'Law and Development: A General Model' (1972) 6 Law & Society Rev. 311-327

Seidman RB, *The State, Law and Development* (Croom Helm 1978)

Seidman RB, 'Law and Development: The Interface Between Policy and Implementation' (1981) 2 Boston College Third World L.J. 47-61

Sekwat A, 'Civil Service Reform in Post-Independence Nigeria: Issues and Challenges' (2002) Public Administration Quarterly 498-517

Sen A, *Development as Freedom* (OUP 1999)

Sen A, *Inequality Re-Examined* (Harvard University Press 1992)

Sequeira S, 'Advances in Measuring Corruption in the Field' in Danila Serra and Leonard Wantchekon (eds), *New Advances in Experimental Research on Corruption (Research in Experimental Economics, Vol. 15)* (Emerald Group Publishing Limited 2012) 145-175

Shapo MS, *Principles of Tort Law* (2nd edn, St. Paul Minnesota 2003)

Shelton D, 'Human Rights and the Environment: What Specific Environmental Rights Have Been Recognised?' (2008) 35(1) Denver Journal of International Law and Policy 129-171

Shelton D, *Remedies in International Human Rights Law* (2nd edn, OUP 2005)

Sherman FC, 'Law and Development Today: The New Developmentalism' (2009) 10 (9) German Law Journal 1258-1273

Shihata IFI, 'Corruption – A General Review with an Emphasis on the Role of the World Bank' (1997) 15(3) Dickinson Journal of International Law 451-485

Shihata IFI, 'Legal Opinion on the Prohibition of Political Activities in the Bank's Work, 11 July 1995' in *World Bank Legal Papers* (Martinus Nijhoff Publishers 2000) 219-244

Shihata IFI, *The World Bank in a Changing World: Selected Essays and Lectures: Volume III* (Brill - Nijhoff 2000)

Shleifer A, and Vishny RW, 'Corruption' (1993) The Quarterly Journal of Economics 599-617

Sklar RL, *Nigerian Political Parties: Power in an Emergent Nation* (Africa World Press Inc 2004)

Smith A, *An Inquiry in the Nature and Causes of the Wealth of Nations: A Selected Edition* (OUP 2008)

Sokol DD, 'Law and Development – The Way Forward or Just Stuck in the Same Place?' (2010) 104 Northwestern University Law Review Colloquy 238-243

Ssenyonjo M, *Economic, Social and Cultural Rights in International Law* (Hart Publishing 2009)

Stein H and Nafziger EW, 'Structural Adjustment, Human Needs and the World Bank Agenda' (1991) 29(1) Journal of Modern African Studies 173-189

Stein H, *Beyond the World Bank Agenda: An Institutional Approach to Development* (The University of Chicago Press 2008)

Stiglitz J, *Globalization and its Discontents* (New York: W.W. Norton, 2002)

Sturzenegger F and Zettelmeyer J, *Debt Defaults and Lessons from a Decade of Crises* (MIT Press 2007)

Suberu RT, 'Prebendal Politics and Federal Governance in Nigeria' in Wale Adebawale and Ebenezer Obadare (eds.) *Democracy and Prebendalism in Nigeria: Critical Interpretations* (Palgrave Macmillan 2013) 79-101

Szeftel M, 'Clientelism, Corruption and Catastrophe' (2000) 85 Review of African Political Economy 427-441

Tamanaha BZ, 'The Lessons of Law and Development Studies' (1995) 89(2) American Journal of International Law 470-486

Tamanaha BZ, 'The Primacy of Society and the Failures of Law and Development' (2011) 44 Cornell Int'l Law Journal 209-247

Tarp F, *Stabilisation and Structural Adjustment: Macroeconomic Frameworks for Analysing the Crisis in Sub-Saharan Africa* (Routledge 1993)

Tella CM and Liberty SM, 'Poor Leadership, Indiscipline and Corruption Undermines Peace in Northern Nigeria' (2014) 3(5) American Journal of Social Science 207-214

Tiilikka P, 'Access to Information as a Human Right in the Case Law of the European Court of Human Rights' (2013) 5(1) Journal of Media Law 79-103

Todaro MP and Smith SC, *Economic Development* (11th Edn, Addison Wesley 2012)

Toyin OS, 'The Impact of Military Coup D'etat on Political Development in Nigeria' (2015) 6(10) Int'l Journal of Business and Social Science 194-202

Trebilcock MJ and Prado MM, *What Makes Poor Countries Poor: Institutional Determinants of Development* (Edward Elgar Publishing Ltd 2011)

Trubek DM, 'Toward a Social Theory of Law: An Essay on the Study of Law and Development' (1972) 82 (1) The Yale Law Journal 1-50

Trubek DM, and Galanter M, 'Scholars in Self-Estrangement: Some Reflections on the Crisis in Law and Development Studies in the United States' (1974) Wisconsin Law Review, 1062-1103

Trubek DM, 'Law and Development' in N. J. Smelser and P. B. Baltes (eds), *International Encyclopedia of Social & Behavioural Sciences* (Pergamon 2001) 8443-8446

Trubek DM, and Santos A, 'Introduction: The Third Movement in Law and Development Theory and the Emergence of a New Critical Practice' in D. M. Trubek and A. Santos (eds) *The New Law and Economic Development: A Critical Appraisal* (CUP 2006) 1-18

Trubek DM, and Santos A (eds), *The New Law and Economic Development: A Critical Appraisal* (CUP 2006)

Trubek DM, 'The Political Economy of the Rule of Law: The Challenge of the New Developmental State' (2009) 1 Hague Journal on the Rule of Law 28-32

Uddoh J, *Corruption and Nigerian Foreign Policy (1999-2007)* (AuthorHouse Indiana 2016)

Udombana NJ, 'Fighting Corruption Seriously? Africa's Anti-Corruption Convention' (2003) 7 Singapore Journal of International & Comparative Law 447-488

Unsworth S, 'What's Politics Got to Do with It? Why Donors Find it So Hard to Come to Terms with Politics, and Why This Matters' (2009) 21(6) Journal of International Development 883-894

Upham F, 'Mythmaking in the Rule-of-Law Orthodoxy' in Thomas Carothers (ed), *Promoting the Rule of Law Abroad: In Search of Knowledge* (Carnegie Endowment for International Peace 2006) 75-104

Urta FJ, 'Assessing Corruption - An Analytical Review of Corruption Measurement and its Problems: Perception, Error and Utility' (2007) Edmund A. Walsh School of Public Service, Georgetown Washington 1-12

Uvin P, 'From the Right to Development to the Rights-Based Approach: How "Human Rights" Entered Development' (2007) 17(4-5) *Development in Practice* 597-606

Vandenbogaerde A, 'The Right to Development in International Human Rights Law: A Call for its Dissolution' (2013) 31(2) *Netherlands Quarterly of Human Rights* 187-209

Vaughn J and Otenyo E, *Managerial Discretion in Government Decision Making: Beyond the Street Level* (Jones and Bartlett Publishers Inc 2007)

Venard B, 'Institutions, Corruption and Sustainable Development' (2013) 4 (33) *Economics Bulletin* 2545-2562

Verma SV, 'International Code of Conduct for Transnational Corporations' (1980) *Indian Journal of International Law* 20-23

Waterbury J, 'Endemic and Planned Corruption in a Monarchical Regime' (1973) 25(4) *World Politics* 533-555

Webley L, 'Qualitative Approaches to Empirical Legal Research' in Peter Cane and Herbert M. Kritzer (eds), *The Oxford Handbook of Empirical Legal Research* (OUP 2012) 926-951

Weder B, 'Institutions, Corruption and Development and Their Ramifications for International Cooperation, in Hans van Ginkel, Brendan Barret, Julius Court and Jerry Velasquez (eds) *Human Development and the Environment: Challenges for the United Nations in the New Millennium* (United Nations University Press 2002)

Weiss F and Steiner S, 'Transparency as an Element of Good Governance in the Practice of the EU and the WTO: Overview and Comparison' (2006) 30(5) *Fordham International Law Journal* 1545-1586

West R, 'Law, Rights and other Totemic Illusions: Legal Liberalism and Fraud's Theory of the Rule of Law' (1986) 134 *University of Pennsylvania Law Review* 817-882

Williams A and Saddique A, 'The Use and Abuse of Governance Indicators' (2008) 9 *Economics of Governance* 131-175

Williamson J, *Latin American Adjustment: How Much Has Happened* (Institute for International Economics 1990)

Wraith RE, and Simkins E, *Corruption in Developing Countries* (Allen and Unwin 1963)

Yin RK, *Case Study Research: Design and Methods* (Sage 2009)

Zumbansen P, 'Law After the Welfare State: Formalism, Functionalism and the Ironic Turn of Reflective Law' (2008) 56(3) *American Journal of Comparative Law* 769-808

Official Documents

ACHPR, 'Concluding Observations and Recommendations on the 5th Periodic Report of the Federal Republic of Nigeria on the Implementation of the African Charter on Human and Peoples' Rights (2011 – 2014)' (57th Session, Banjul, the Gambia, 4-11 November 2015)

Africa Development Bank, 'Bank Policy on Good Governance' (November 1999) <https://www.afdb.org/fileadmin/uploads/afdb/Documents/Policy-Documents/21-EN-Bank_Group_Policy_on_Good_Governance.pdf> accessed 4 August 2017

Bhargava V (ed), 'Curing the Cancer of Corruption' in *Global Issues for Global Citizens: An Introduction to Key Development Challenges* (World Bank, Washington D.C 2006)

Centre for the Future State, *An Upside-Down View of Governance* (Institute of Development Studies 2010)

Chêne M, 'Update on UNCAC Implementation in Africa' (U4 Anti-Corruption Resource Centre Expert Answer 2006)

Code of Conduct Bureau, 'Progress Report' <http://www.ccb.gov.ng/index.php?option=com_content&view=article&id=86&Itemid=500> accessed 29 April 2017

Convention on Business Integrity, 'Report of the Public Perceptions of the Anti-Corruption Agencies' (Lagos 2010)

Council of the European Union, *EU Action Plan on Human Rights and Democracy* (European Union 2015)

De Beke AO, 'IMF Activities to Promote Good Governance and Combat Corruption: An Overview' (IMF Policy Development and Review Department, Washington D.C 2002)

DfiD, 'Elections in Nigeria in 2007' (DfiD, London 2008)

DfiD, 'Realising Human Rights for Poor People' (Target Strategy Paper 2000)

DfID, *The Department for International Development's Approach to Anti-Corruption* (Independent Commission for Aid Impact Report, November 2011)

DNV-GL and United Nations Global Compact, *IMPACT: Transforming Business, Changing the World* (UN Global Impact 2015)

Doig A, Williams R and Watt D, *Measuring "Success" in Five African Anti-Corruption Commissions* (U4 Report 2005)

Ericsson J, *The Comprehensive Development Framework: A Multi-Partner Review* (World Bank Operations Evaluation Department Document 2003)

European Commission, 'The European Union's Role in Promoting Human Rights and Democratisation in Third Countries' COM (2001) 252 final

Federal Republic of Nigeria, 'White Paper on the Report of the Presidential Committee on Restructuring and Rationalisation of Federal Government Parastatals, Commissions and Agencies' (Federal Government Printer, Lagos, March 2014)

Global Financial Integrity, *Illicit Financial Flows to and From Developing Countries: 2005-2014* (Global Financial Integrity, Washington, D.C 2017)

Global Integrity and UNDP, *A User's Guide to Measuring Corruption* (UNDP, Oslo 2008)

Gonzalez de Asis M, *Anticorruption Reform in Rule of Law Programs* (World Bank Institute 2006)

Hanson S, 'Corruption in Sub-Saharan Africa' (*Council on Foreign Relations* 6 August 2009) <<http://www.cfr.org/africa-sub-saharan/corruption-sub-saharan-africa/p19984>> accessed 27 August 2014

HRBA Portal, 'UN Practitioners' Portal on Human Rights-Based Approaches to Programming: Topics' <<http://hrbaportal.org/topics>> accessed 17 March 2017

Human Rights Watch, "'Chop Fine": The Human Rights Impact of Local Government Corruption and Mismanagement in Rivers State, Nigeria' (Vol 19, No. 2(A) 2007)

Human Rights Watch, *Corruption on Trial? The Record of Nigeria's Economic and Financial Crimes Commission* (Human Rights Watch, August 2011)

Human Rights Watch, *Election or Selection? Human Rights Abuse and Threats to Free and Fair Elections in Nigeria* (Human Rights Watch, April 2007)

ICPC, 'Independent Corrupt Practices and Other Related Offences Commission (ICPC) Nigeria: Recent Interventions in the Education Sector (August 2013) <https://www.unodc.org/documents/treaties/UNCAC/WorkingGroups/workinggroup4/2013-August-26-28/Presentations/ICPC_INTERVENTION_IN_THE_EDUCATION_SECTOR.pdf> accessed 4 January 2016

Independent Commission on International Development Issues, *North-South: A Programme for Survival* (Pan Books 1980)

International Council on Human Rights and Transparency International, *Corruption and Human Rights: Making the Connection* (Switzerland 2009)

International Council on Human Rights Policy and Transparency International, *Integrating Human Rights in the Anti-Corruption Agenda: Challenges, Possibilities and Opportunities* (ICHRP, Switzerland 2010)

International Council on Human Rights Policy and Transparency International, *Corruption and Human Rights: Making the Connection* (ICHRP, Switzerland 2009)

International Monetary Fund, 'Factsheet: IMF Surveillance' (Washington D.C. 23 September 2015) <<http://www.imf.org/external/np/exr/facts/surv.htm>> accessed 2 February 2016

International Monetary Fund, 'IMF and Good Governance: Fact Sheet' (10 September 2015) <<http://www.imf.org/About/Factsheets/The-IMF-and-Good-Governance?pdf=1>> accessed 2 November 2015

International Monetary Fund, *Good Governance: The IMF's Role* (IMF, Washington D.C. 1997)

International Monetary Fund, *Review of the Fund's Experience in Governance Issues* (IMF Washington, D.C 2001)

Kauffman D, Kraay A and Mastruzzi M, 'Measuring Corruption: Myths and Realities' (World Bank September 2006)

Kaufmann D, 'Myths and Realities of Governance and Corruption' in World Economic Forum *Global Competitiveness Report 2005-2006* (World Economic Forum 2005) 81-98

Kpundeh S and Dininio P, 'Political Will' in Rick Stapenhurt, Niall Johnston and Riccardo Pellizo (eds), *The Role of Parliament in Curbing Corruption* (World Bank 2006) 41-50

Kpundeh SJ, 'Political Will in Fighting Corruption' in UNDP, *Corruption and Integrity Improvement Initiatives in Developing Countries* (United Nations, New York 1998) 91-115

Levy B and Kpundeh SJ (eds), *Building State Capacity in Africa: New Approaches, Emerging Lessons* (World Bank, Washington D.C 2004)

Levy B, 'Governance and Economic Development in Africa: Meeting the Challenge of Capacity Building' in Brian Levy and Sahr John Kpundeh (eds), *Building State Capacity in Africa: New Approaches, Emerging Lessons* (World Bank, Washington D.C 2004) 1-42

Mumuni A and Sweeney G, 'Public Interest Litigation for the Right to Education' in Transparency International, *Global Corruption Report: Education* (Routledge 2013) 307-310

National Democratic Institute, 'Final NDI Report on Nigeria's 2007 Elections' (NDI, Washington D.C April 2008)

NNPC, 'History of the Nigerian Petroleum Industry' <<http://nnpcgroup.com/nnpcbussiness/businessinformation/oilgasinnigeria/industryhistory.aspx>> accessed 20 April 2017

NORAD, *Evaluation of Transparency International* (NORAD, Oslo February 2011)

OAUFGF, 'Report on Special Periodic Checks on the Activities and Programmes of Niger Delta Development Commission (NDDC) for the Period 2008-2012' (Abuja 14 August 2015)

Odugbemi S and Jacobson T (eds), *Governance Reform Under Real-World Conditions: Citizens, Stakeholders and Voice* (World Bank, Washington D.C 2008)

OECD, 'Reinforcing Political Will to Fight Corruption in Eastern Europe and Central Asia' (Report of High-Level Meeting of OECD Anti-Corruption Network for Eastern Europe and Central Asia, 2012)

OECD, *Accountability and Democratic Governance: Orientations and Principles for Development* (DAC Guidelines and Reference Series, OECD Publishing 2014)

OHCHR, 'Annual Report of the United Nations High Commissioner for Human Rights and Reports of the Office of the High Commissioner and the Secretary General' (2013) A/HRC/23/26

OHCHR, 'Documents on Development and Human Rights' <<http://www.ohchr.org/EN/Issues/Development/Pages/Documents.aspx>> accessed 17 March 2017

OHCHR, 'Human Rights Indicators: Tools for Measuring Progress' (2012) <<http://www.ohchr.org/EN/Issues/Indicators/Pages/HRIndicatorsIndex.aspx>> accessed 12 April 2016

OHCHR, 'Report on the Implementation of Economic, Social and Cultural Rights' (8 June 2009) E/2009/90

OHCHR, 'United Nations Conference on Anti-Corruption Measures, Good Governance and Human Rights: 8-9 November 2006' <<http://www.ohchr.org/EN/Issues/Development/GoodGovernance/Pages/WarsawConference.aspx>> accessed 9 April 2017

OHCHR, 'Vienna Declaration and Programme of Action' (12 June 1993) A/CONF.157/23

OHCHR, *Frequently Asked Questions on a Human Rights-Based Approach to Development Cooperation* (New York and Geneva 2006)

OHCHR, *Good Governance Practices for the Protection of Human Rights* (United Nations 2007)

OHCHR, *Human Rights Indicators: A Guide to Measurement and Implementation* (United Nations 2012)

OHCHR, *The Human Rights Case Against Corruption* (UN, Geneva November 2013)

Overseas Development Institute, *Africa's Economic Crisis*' (ODI Briefing Paper No 2, September 1982)

Oxford Policy Management, 'Medium Term Expenditure Frameworks - Panacea or Dangerous Distraction' (OPM Review 2000)

Parliamentary Assembly of the Council of Europe, Committee on Legal Affairs and Human Rights, 'Background Document Prepared by the European Human Rights Association' (2014) AS/Jur 19

Pilapitiya T, 'The Impact of Corruption on the Human Rights Based Approach to Development' (UNDP Research Policy Paper September 2004)

Putzel J, *Conflict and Fragility: Do no Harm: International Support for Statebuilding* (OECD 2010)

Shihata I, 'Issues of "Governance" in Borrowing Members: The Extent of Their Relevance Under the Bank's Articles of Agreement, Legal Memorandum of the General Counsel' (World Bank 21 December 1990)

Sida, *Perspectives on Poverty* (Policy Department Stockholm 2002)

Storey B, 'Report of the Commission of Inquiry into the Administration of the Lagos Town Council, Nigeria' (Government Printer 1953)

Transparency International, Global Corruption Report: Overview
<<https://www.transparency.org/research/gcr/>> accessed 21 April 2016

Transparency International, *The Anti-Corruption Plain Language Guide* (TI 2009)

UN Committee Against Torture, 'Seventh Annual Report of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman and Degrading Treatment and Punishment' (52nd Session, 20 March 2014) UN Doc CAT/C/52/2

UN Committee on Economic, Social and Cultural Rights, 'General Comment No. 14, The Right to the Highest Attainable Standard of Health' (12 May 2000)

UN ECOSOC 'Preliminary Report of the Special Rapporteur, Ms. Christy Mbonu on Corruption and its Impact on the Full Enjoyment of Human Rights, in Particular, Economic, Social and Cultural Rights' (7 July 2004) E/CN.4/Sub.2/2004/23

UN Human Rights, 'Human Rights Monitoring Mechanisms' (2010)
<<http://shaheedoniran.org/human-rights-at-the-united-nations/human-rights-monitoring-mechanisms/>> accessed 7 April 2016

UNDP, 'Governance for Sustainable Development' (UNDP Policy Document 1997)

UNDP, *A Guide to Civil Society Organisations Working on Democratic Governance* (UNDP, New York 2005)

UNDP, *Anti-Corruption Strategies: Understanding What Works, What Doesn't and Why? Lessons Learned from the Asia-Pacific Region* (UNDP, New York 2014)

UNDP, *Human Development Report 1992* (OUP 1992)

UNDP, *Human Development Report 1995: Gender and Human Development* (OUP 1995)

UNDP, *Human Development Report 2000: Human Rights and Human Development* (OUP 2000)

UNDP, *Human Development Report: Human Rights and Human Development 2000* (New York 2000)

UNDP, *Human Development Report: Work for Human Development* (UNDP, New York 2015)

UNECA, *Africa Governance Report IV: Measuring Corruption in Africa: The International Dimension Matters* (UNECA, Addis Ababa 2016)

UNGA, 'Report of the Special Rapporteur on Extreme Poverty and Human Rights' 70th Session (4 August 2015) UN Doc A/70/274 World Bank, *World Development Report 2017: Governance and the Law* (World Bank, Washington D. C 2017)

UNGA, 'United Nations Millennium Declaration' UN Res 55/2 (8 September 2000) UN Doc A/RES/55/2

UNHRC, 'Cross Regional Statement on Corruption and Human Rights' Delivered by Morocco on Behalf of a Group of 132 States (26 June 2012) <<http://www.ohchr.org/Documents/Issues/Development/GoodGovernance/Corruption/MoroccoStatementHRAAndCorruption.pdf>> 2 February 2017

UNHRC, 'Final Report of Human Rights Council Advisory Committee on the Issue of the Negative Impact of Corruption on the Enjoyment of Human Rights' (28th Session, 5 January 2015) A/HRC/28/73

UNHRC, 'Research-Based Progress Report on the Negative Impact of Corruption on the Enjoyment of Human Rights' (11-15 August 2014) A/HRC/AC/13/CRP.3

United Nations Commission on Human Rights, 'Preliminary Report of the Special Rapporteur, Ms. Christy Mbonu on Corruption and its Impact on the Full Enjoyment of Human Rights, in Particular, Economic, Social and Cultural Rights' 55th Session (7 July 2004) UN Doc E/CN.4/Sub.2/2004/23

United Nations Commission on Human Rights, 'Progress Report of the Special Rapporteur, Ms. Christy Mbonu on Corruption and its Impact on the Full Enjoyment of Human Rights, in Particular, Economic, Social and Cultural Rights' 57th Session (22 June 2005) UN Doc E/CN.4/Sub.2/2005/18

United Nations Commission on Human Rights, 'Working Report of the Special Rapporteur, Ms. Christy Mbonu on Corruption and its Impact on the Full Enjoyment of Human Rights, in Particular, Economic, Social and Cultural Rights' 55th Session (14 May 2003) UN Doc E/CN.4/Sub.2/2003/18

United Nations Population Fund, 'Human Rights Principles' (2005) <<http://www.unfpa.org/resources/human-rights-principles>> accessed 3 April 2017

United Nations, *The United Nations Agenda for Development: Development for All*, (New York 1997)

UNODC, 'Country Report of the Federal Republic of Nigeria' (22 October 2014) <http://www.unodc.org/documents/treaties/UNCAC/CountryVisitFinalReports/2014_10_14_Final_Country_Report_Nigeria.pdf> accessed 12 April 2016

UNODC, 'Implementation Review Group of the United Nations Convention against Corruption' <<https://www.unodc.org/unodc/en/treaties/CAC/IRG-sessions.html>> accessed 17 May 2016

USAID, *USAID Anticorruption Strategy* (USAID, Washington, D.C 2004)

USAID, *USAID Strategy on Democracy, Human Rights and Governance* (Washington June 2013)

Vinery Bhargava (ed), 'Curing the Cancer of Corruption' in *Global Issues of Global Citizens: An Introduction to key Development Challenges* (World Bank, Washington D.C 2006) 341-370

Wolfensohn JD, 'A Proposal for a Comprehensive Development Framework' (World Bank, January 21, 1999) <http://web.worldbank.org/archive/website01013/WEB/0__CO-87.HTM> accessed 19 July 2014

World Bank, 'History: James David Wolfensohn' <<http://www.worldbank.org/en/about/archives/history/past-presidents/james-david-wolfensohn>> accessed 13 February 2017

World Bank, *Accelerated Development in Sub-Saharan Africa: An Agenda for Action* (World Bank, Washington D. C 1981)

World Bank, *Africa Development Indicators 2010: Silent and Lethal - How Quiet Corruption Undermines Africa's Development Efforts* (World Bank, Washington D.C 2010)

World Bank, *Anticorruption in Transition: A Contribution to the Policy Debate* (The World Bank, Washington D. C 2000)

World Bank, *Governance and Development* (World Bank, Washington D.C 1992)

World Bank, *Helping Countries Combat Corruption: Progress at the World Bank Since 1997* (PREM, Washington D.C June 2000)

World Bank, *Helping Countries Combat Corruption: The Role of the Bank* (PREM, Washington D.C 1997)

World Bank, *Implementation Plan for Strengthening World Bank Group Engagement on Governance and Anticorruption* (World Bank, Washington, D.C 2007)

World Bank, *Implementation Plan for Strengthening World Bank Group Engagement on Governance and Anticorruption* (World Bank, Washington D.C 2007)

World Bank, *Nigeria: Country Procurement Assessment Report (CPAR)* (World Bank, Washington D.C 2000)

World Bank, *Nigeria: Structural Adjustment Program; Policies, Implementation and Impact* (World Bank, Washington D.C 1994)

World Bank, *Public Expenditure Handbook* (Washington D.C 1998)

World Bank, *Sub-Saharan Africa: From Crisis to Sustainable Growth - A Long-Term Perspective Study* (World Bank, Washington, D.C 1989)

World Bank, *Voice for the World's Poor: Selected Speeches and Writings of the World Bank President James D. Wolfensohn, 1995-2005* (World Bank, Washington DC 2005)

World Bank, *World Development Report 1997: The State in a Changing World* (OUP 1997)

Working Papers

Ajibade I, 'Mainstreaming Human Rights into Anti-Corruption: A Strategy for Protecting Vulnerable Groups in Nigeria from Double Jeopardy' (November 2008) SSRN Electronic Journal <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1304247> accessed 15 March 2016

Bacio-Terracino J, 'Corruption as a Violation of Human Rights' (2008), international Council on Human Rights Policy Working Paper <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1107918> accessed 24 March 2015

Booth D and Golooba-Mutebi F, 'Developmental Patrimonialism? The Case of Rwanda' (2011) Africa Power and Politics Programme Working Paper 16, <<http://www.institutions-africa.org/filestream/20110321-appp-working-paper-16-developmental-patrimonialism-the-case-of-rwanda-by-david-booth-and-frederick-golooba-mutebi-march-2011>> accessed 10 May 2017

Booth D, 'Development as a Collective Action Problem: Addressing the Real Challenges of African Governance' (October 2012) Africa Power and Politics Programme Policy Brief 09 <<http://www.institutions-africa.org/filestream/20121024-appp-policy-brief-09-development-as-a-collective-action-problem>> accessed 17 March 2017

Booth D, 'Governance for Development in Africa: Building on What Works' (2011) Africa Power and Politics Programme Policy Brief 01 <<http://www.institutions-africa.org/filestream/20110406-appp-policy-brief-01-governance-for-development-in-africa-building-on-what-works-by-david-booth-april-2011>> accessed 17 March 2017

Camerer L, 'Tackling the Multi-Headed Dragon: Prospects for a Single Anti-corruption Agency in South Africa' (1999) Institute for Security Studies Occasional Paper No 38 <<https://issafrica.org/research/papers/tackling-the-multi-headed-dragon-evaluating-prospects-for-a-single-anti-corruption-agency-in-south-africa>> accessed 13 February 2017

Castellanos-Jankiewicz L, 'Causation and International State Responsibility' (2012) ACIL Research Paper No 2012-07

Crook RC and Booth D (eds), 'Working with the Grain? Rethinking Africa Governance' (2011) 42(2) IDS Bulletin 1-10

Ebben W and De Vaal A, 'Institutions and the Relation Between Corruption and Economic Growth' (2009) NiCE Working Paper 09-104

Enweremadu DU, 'Anti-Corruption Policies in Nigeria Under Obasanjo and Yar'adua: What to do After 2011' (2010) Friedrich-Ebert-Stiftung Discussion Paper 1 <<http://library.fes.de/pdf-files/bueros/nigeria/07813.pdf>> accessed 21 November 2015

Fisman R and Gatti R, 'Bargaining for Bribes: The Role of Institutions (2006) Discussion Paper No. 5712, CEPR

Goetz AM and Jenkins R, 'Voice, Accountability and Human Development: The Emergence of a New Agenda' (2002) Human Development Report 2002 Background Paper 5

Gould DJ and Amaro-Reyes JA, 'The Effects of Corruption on Administrative Performance: Illustrations from Developing Countries' (1983) World Bank Staff Working Paper N0. 580

Gupta S, Davoodi H and Tiongson E, 'Corruption and the Provision of Health Care and Education Services' (2000) IMF Working Paper No. 116 <<http://www.imf.org/external/pubs/ft/wp/2000/wp00116.pdf>> accessed 29 April 2017

Hammergren L, 'Do Councils Further Judicial Reform? Lessons from Latin America' (2002) Carnegie Endowment for International Peace, Rule of Law Series, Working Paper 28 < https://media.law.wisc.edu/s/c_8/zfmfw/lhdjc.pdf> accessed 28 March 2014

Hellman JS, and Others, 'Measuring Governance, Corruption, and State Capture: How Firms and Bureaucrats Shape the Business Environment in Transition Economies' (2000) World Bank Policy Research Working Paper 2312

Hyden G, 'Political Accountability in Africa: Is the Glass Half-Full or Half-Empty?' (2010) Africa Power and Politics Programme Working Paper 6 <<https://assets.publishing.service.gov.uk/media/57a08b08e5274a31e0000914/appp-working-paper-6.pdf>> accessed 17 March 2017

Kaufmann D, Kraay A and Mastruzzi M, 'Governance Matters' III: Governance Indicators for 1996-2002' (2003) World Bank Policy Research Department Working Paper N0. 2196 <<http://elibrary.worldbank.org/doi/pdf/10.1596/1813-9450-2196>> accessed 27 October 2014

Kaufmann D, Kraay A and Mastruzzi M, 'The Worldwide Governance Indicators: Methodology and Analytical Issues' (2010) World Bank Draft Policy Research Working Paper 3 <<http://info.worldbank.org/governance/wgi/pdf/WGI.pdf>> accessed 3 February 2016

Kaufmann D, Kraay A and Zoido-Lobaton P, 'Aggregating Governance Indicators' (1999) World Bank Policy Research Working Paper 2195 <<http://info.worldbank.org/governance/wgi/pdf/govind.pdf>> accessed 20 January 2017

Kenny C, Klein M, and Sztajerowska M, 'A Trio of Perspectives on Corruption: Bias, Speed Money and Grand Theft Infrastructure' (2011) World Bank Policy Research Working Paper No. 5889 <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1965920> accessed 29 April 2017

Mahagaonkar P, 'Corruption and Innovation: A Grease of Sand Relationship' (2008) Jena Economic Research Paper No. 2008-017

<<https://www.econstor.eu/bitstream/10419/25713/1/560547560.PDF>> accessed 29 April 2017

Polzer T, 'Corruption: Deconstructing the World Bank Discourse' (2001) Development Studies Institute Working Paper 01-18, <<http://www.lse.ac.uk/internationalDevelopment/pdf/WP/WP18.pdf>> accessed 1 February 2017)

Transparency International, 'Human Rights and Corruption' (2008) Working Paper 05/2008
<http://www.transparency.org/whatwedo/publication/working_paper_no.5_2008_human_rights_and_corruption> accessed 20 April 2017

Trubek DM, 'Developmental States and the Legal Order: Towards a New Political Economy of Development and Law (2009) University of Wisconsin Law School Legal Studies Research Paper Series Paper No. 1075 <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1349163> accessed 12 August 2017

VeneKlasen L, Miller V, Clark C and Reilly M, 'Rights-Based Approaches and Beyond: Challenges of Linking Rights and Participation' (2004) IDS Working Paper 235, 5-6
<<https://www.ids.ac.uk/files/Wp235.pdf>> accessed 3 April 2017

Theses and Dissertations

Dummar FC, 'The History of the Nigerian Army and the Implications for the Future of Nigeria' (Master's Thesis, U.S Army Command and General Staff College 2002)

Joseph JG, 'World Bank and the Crises of Development in Nigeria (1999 to 2008)' (M.Sc. Dissertation, University of Nigeria 2010)

Marquette HA, 'The Origins and Development of the World Bank's Anti-Corruption Programme' (PhD Thesis, Durham University 2002)

Mills LC, 'Questionable and Unintended Consequences: A Critical Assessment of the International Donor Community's Fight against Corruption in Sub-Saharan Africa' (PhD Thesis, London School of Economics and Political Science 2012)

Nweze VO, 'Assessing the Effects of State Economic Empowerment and Development Strategy (NEEDS) in the Development of Public Service in Enugu State: A Case Study of Ministries of Education and Finance (1999-2007)' (MSc Dissertation, University of Nigeria 2010)

Presentations and Speeches

Batidam D, 'Statement by Chairperson of Africa Union Advisory Board on Corruption' (Joint Opening Ceremony of the 59th Ordinary Session of the African Commission on Human and Peoples' Rights and the 28th Ordinary Session of the African Committee of Experts on the Rights and Welfare of the Child, Banjul, The Gambia, 21 October 2016)

De Maria W, 'The New War on African "Corruption": Just Another Neo-Colonial Adventure?' (4th International Critical Management Studies Conference, Cambridge, 4-7 July 2005)

De Morais RM, 'Impact of Corruption on Human Rights in Angola' (European Parliament Sub-Committee on Human Rights Workshop on Corruption and Human Rights in Third Countries, Brussels, 28 February 2013)

Feinstein A, 'Corruption in Trade and its Impact on Human Rights in Third Countries' (European Parliament Sub-Committee on Human Rights Workshop on Corruption and Human Rights in Third Countries, Brussels, 28 February 2013)

Johnson M, 'The Political Costs of Corruption' (First Latin American Conference on the Fight Against Bureaucratic Corruption, Santa Fe de Bogota, November 1993)

Kaufmann D and Kraay A, 'On Measuring Governance: Framing Issues for Debate' (World Bank Institute and the Development Economics Vice-Presidency of the World Bank, Issues Paper for January 11th, 2007 Roundtable on Measuring Governance 2007)

Obama B, 'Remarks to the People of Africa' (Mandela Hall, Africa Union Headquarters, Addis Ababa, Ethiopia 28 July 2015)

Pettengill J, 'Impact of Corruption on Human Rights in Russia' (European Parliament Sub-Committee on Human Rights Workshop on Corruption and Human Rights in Third Countries, Brussels, 28 February 2013)

Ribadu N, 'Combating Money Laundering in Emerging Economies: Nigeria as a Case Study' (Financial Institutions Training Centre/Nigerian Institute of International Affairs Lagos, Guest Lecture Series, 10 August 2006)

Robinson M, 'Bridging the Gap Between Human Rights and development: From Normative Principles to Operational Relevance' (World Bank Presidential Lecture, Washington D.C, 3 December 2001)

Sen A, 'What is the Role of Legal and Judicial Reform in the Development Process' (World Bank Legal Conference on the Role of Legal and Judicial Reform in Development, Washington DC, June 2000)

Stein H, 'Crises and the Bretton Woods Institutions and the Crises of the Bretton Woods Institutions' (Shadow GN Conference, Columbia University, February 2009)

Stieglitz J, 'Whither Reform? Ten Years of Transition' (Keynote Address at Annual World Bank Conference on Development Economics, Washington D.C, 28-30 April 1999)

Sweeney G, 'Linking Acts of Corruption with Specific Human Rights' (European Sub-Committee on Human Rights, 'Corruption and Human Rights in Third Countries' Workshop, 28 February 2013)

Ville J, 'EU Policy and Action to Fight Corruption While Safeguarding Human Rights' (European Parliament Sub-Committee on Human Rights Workshop on Corruption and Human Rights in Third Countries, Brussels, 28 February 2013)

Wolfensohn JD, 'People and Development' (Address to the Board of Governors at the Annual General Meetings of the World Bank and the International Monetary Fund, 1 October 1996)

Wolfesohn JD, 'Building an Equitable World' (Address to World Bank Annual General Meetings, 26 September 2000).

Statistical and Other Data Sources

Afrobarometer and Transparency International. 'People and Corruption: Africa Survey 2015' (Transparency International, Berlin 2015)

AU, 'African Union Convention on Preventing and Combating Corruption: Status List' <<https://www.au.int/web/en/treaties/african-union-convention-preventing-and-combating-corruption>> accessed 29 April 2017.

EFCC 'EFCC Convictions' <<https://efccnigeria.org/efcc/index.php/convictions>> accessed 21 November 2015

Global Financial Integrity, 'Data by Country: Average Annual Illicit Financial Outflows: 2004-2013' <<http://www.gfintegrity.org/issues/data-by-country/>> accessed 17 October 2016

Global Financial Integrity, 'Illicit Financial Flows from Developing Countries: 2004-2013' (Global Financial Integrity, December 2015)

ICPC, 'Status of Criminal and Civil Cases as at March 2015 - Part 1' (2015) <<http://icpc.gov.ng/downloads/>> accessed 21 November 2015

OPEC, 'Nigeria Facts and Figures' <http://www.opec.org/opec_web/en/about_us/167.htm> accessed 17 October 2016

Ramos M, 'What's the Biggest Challenge for Africa in 2015?' (World Economic Forum Survey on the Global Agenda 2015, 9 November 2014) <<https://agenda.weforum.org/2014/11/whats-biggest-challenge-africa-2015/>> accessed 23 October 2015

Transparency International, 'Corruption Perceptions Index 2016' <http://www.transparency.org/news/feature/corruption_perceptions_index_2016> accessed 20 April 2016

Transparency International, 'Corruption Perceptions Index: Overview' <<http://www.transparency.org/research/cpi/overview>> accessed 27 April 2017

Transparency International, *Global Corruption Barometer 2013* (Transparency International, Berlin 2013)

UNDP, 'Human Development Indicators 2015: Nigeria' <<http://hdr.undp.org/en/countries/profiles/NGA>> accessed 17 October 2016

United Nations, 'World Statistics Pocketbook - Nigeria' <<http://data.un.org/CountryProfile.aspx?crName=NIGERIA#Summary>> accessed 17 October 2016

UNODC, 'United Nations Convention against Corruption: Signature and Ratification Status as of 12 December 2016'

<<https://www.unodc.org/unodc/en/treaties/CAC/signatories.html>> accessed 29 April 2017

World Bank, 'Business Environment and Enterprise Survey' <<http://data.worldbank.org/data-catalog/BEEPS>> accessed 27 April 2017

World Bank, 'Projects and Operations: Economic Management Technical Assistance Project' (World Bank 1992) <<http://projects.worldbank.org/P002167/economic-management-technical-assistance-project?lang=en>> accessed 16 December 2016

World Bank, 'Worldwide Governance Indicators' <<http://info.worldbank.org/governance/wgi/#home>> accessed 10 March 2017

News Articles

Adebayo H, 'In Another Blow, Senate Rejects Buhari's "Empty" Fiscal Proposals' *Premium Times* (Abuja, 3 November 2016) <<http://www.premiumtimesng.com/news/headlines/214472-another-blow-senate-rejects-buharis-empty-fiscal-proposals.html>> accessed 29 April 2017

Adebayo H, 'Protesters Storm Abuja, Accuse Buhari's Govt of Nepotism, Illegal Recruitment' *Premium Times* (Abuja, 27 July 2016) <<http://www.premiumtimesng.com/news/headlines/207673-protesters-storm-abuja-accuse-buharis-govt-nepotism-illegal-recruitment.html>> accessed 9 March 2017

Adigun B, 'Nigerian Candidate Wins Court Ruling' *The Washington Post* (Washington D.C, 16 April 2007) <<http://www.washingtonpost.com/wp-dyn/content/article/2007/04/16/AR2007041600296.html>> accessed 21 February 2017

Ajibade A, 'Merger of EFCC, ICPC, Others not Foreseeable' *The Nation* (Lagos, 15 February 2016) <<http://thenationonlineng.net/merger-of-efcc-icpc-others-not-foreseeable/>> accessed 10 January 2017

Al Jazeera, 'Head to Head - Nigeria's Future: Failed State or African Superpower' (2 May 2015) <<https://www.youtube.com/watch?v=YAY04VWpWfE>> accessed 11 January 2016

Alli Y, 'Okigbo Report Indicts IBB, Two Others' *The Punch* (Lagos, 16 May 2005) <<https://www.laits.utexas.edu/africa/ads/698.html>> accessed 14 December 2016

BBC News, 'Nigeria President Appoints Anti-Corruption Advisers' (London, 11 August 2015) <<http://www.bbc.co.uk/news/world-africa-33857545>> accessed 10 January 2017

BBC News, 'Abacha Loot: Nigeria to get \$227m from Liechtenstein' (London, 19 June 2014) <<http://www.bbc.co.uk/news/world-africa-27926100>> accessed 21 October 2015

BBC News, 'Nigeria Becomes Africa's Biggest Economy' (London, 6 April 2014) <<http://www.bbc.co.uk/news/business-26913497>> accessed 17 October 2016

BBC News, 'Nigeria Dismisses James Ibori Money Laundering Charges' (London, 17 December 2009) <<http://news.bbc.co.uk/1/hi/world/africa/8418302.stm>> accessed 6 January 2017

BBC News, 'Nigeria's Dasuki "Arrested Over \$2bn Arms Fraud"' (London, 1 December 2015) <<http://www.bbc.co.uk/news/world-africa-34973872>> accessed 17 October 2016

BBC News, 'Nigerian Ex-Police Chief Jailed' (London, 22 November 2005) <<http://news.bbc.co.uk/1/hi/world/africa/4460740.stm>> accessed 6 January 2016

BBC News, 'Nigerian VP Named on Graft List' (London, 7 February 2007) <<http://news.bbc.co.uk/1/hi/world/africa/6338017.stm>> accessed 28 November 2015

CNN, 'Survey of Young Africans on the Challenges and Future of Africa' (CNN Inside Africa, 13 December 2013) <http://edition.cnn.com/2013/12/13/world/africa/africa-post-mandela-survey-jana/index.html?hpt=hp_c1> accessed 23 October 2015

Dahiru M, 'The Many Side Effects of Buhari's Sectionalism' *Premium Times* (Abuja, 11 August 2016) <<http://opinion.premiumtimesng.com/2016/08/11/174303/>> accessed 9 March 2017

Daniel S, 'Buahri to Merge EFCC, ICPC; 42 Ministries Reduced to 19' *Vanguard* (Lagos, 21 June 2015) <<http://www.vanguardngr.com/2015/06/buhari-to-merge-efcc-icpc-42-ministries-reduced-to-19/>> accessed 10 January 2017

Dash L, 'Mysterious Fires Plague Nigerian Investigations' *The Washington Post* (Washington, D.C., 27 February 1983) <https://www.washingtonpost.com/archive/politics/1983/02/27/mysterious-fires-plague-nigerian-investigations/51b50b62-392f-4455-acbd-5d713364dbc0/?utm_term=.0fb864272f53> accessed 14 December 2016

Falana F, 'Anti-Graft Agencies and AG' *This Day* (Lagos, 21 August 2007)

Ibekwe N, 'Conduct Bureau Clams 13-Count Corruption Charge on Senate President, Bukola Saraki' *Premium Times* (Abuja, 16 September 2015) <<http://www.premiumtimesng.com/news/top-news/190161-conduct-bureau-slams-13-count-corruption-charge-on-senate-president-bukola-saraki.html>> accessed 5 January 2016

Jimoh A, 'EFCC Release Lists of Candidates Adjudged Corrupt and Unfit for Elections' *Sahara Reporters* (New York, 16 March 2007) <<http://preview.saharareporters.com/2008/07/09/efcc-release-lists-candidates-adjudged-corrupt-and-unfit-elections>> accessed 28 November 2015

Momodu S, 'Is Buhari's Nepotism the Worst in Nigeria's History?' *This Day* (Lagos, 12 August 2016) <<https://www.thisdaylive.com/index.php/2016/08/12/rail-of-hope-from-16-years-of-waste/>> accessed 9 March 2017

News Agency of Nigeria, 'Expert Advises FG to Sensitise Nigerians on Medium Term Expenditure Framework' (Abuja, 9 December 2015) <<http://nannewsnigeria.com/expert-advises-fg-sensitise-nigerians-medium-term-expenditure-framework>> accessed 11 February 2016

Nigerian Muse, 'The Missing Okigbo Panel Report' (Lagos, 28 December 2006) <http://www.nigerianmuse.com/nigeriawatch/okigbo/?u=Punch_missing_Okigbo_report.htm> accessed 14 December 2016

Nigerian Tribune, 'Bode George, Kalu, Ladoja, Dariye, 52 Others looted 243bn - EFCC' *Nigerian Tribune* (Ibadan, 10 July 2009)

Obasi B, 'FG Fights Graft with N31bn in 2017' *The Sun* (Abuja, 30 December 2016) <<http://sunnewsonline.com/fg-fights-graft-with-n31bn-in-2017/>> accessed 9 January 2017

Obayuwana O, 'ID Card Award to French Firm Worries Party' *The Guardian* (Lagos, 26 July 2001) <<http://allafrica.com/stories/200107260484.html>> accessed 6 January 2017

Odittah C, 'EFCC, ICPC, CCB Plan Joint Operations' *Leadership* (Abuja, 19 September 2012) <<http://allafrica.com/stories/201209190236.html>> accessed 10 January 2017

Okaku E, 'False Asset Declaration Charge: Saraki Discharged, Acquitted' *Premium Times* (Abuja, 14 June 2017) <<http://www.premiumtimesng.com/news/top-news/234057-breaking-false-asset-declaration-charge-saraki-discharged-acquitted.html>> accessed 5 August 2017

Okakwu E, 'Updated: Supreme Court Says Senate President, Bukola Saraki, Must Face Corruption Trial' *Premium Times* (Abuja, 5 February 2016) <<http://www.premiumtimesng.com/news/headlines/198003-breaking-supreme-court-rejects-sarakis-appeal-orders-face-corruption-trial.html>> accessed 29 April 2017

Oketola D, Falodi F and Alagbe J, 'Southern Groups Knock Buhari's Pro-North Security Appointments' *Punch* (Lagos, 2 July 2016) <<http://punchng.com/southern-groups-knock-buharis-pro-north-security-appointments/>> accessed 9 March 2017

Olusoji S, 'Shehu Shagari at 91: A National Hero' *This Day* (Lagos, 11 March 2016) <<http://www.thisdaylive.com/index.php/2016/03/11/shehu-shagari-at-91-a-national-hero/>> 14 December 2016

Omoru H, 'Power: Obasanjo, Yar'Adua Jonathan Spent N2.74trn in 16 Years' *Vanguard* (Lagos, 9 September 2015) <<http://www.vanguardngr.com/2015/09/power-obasanjo-yaradua-jonathan-spent-n2-74trn-in-16-years/>> accessed 11 January 2016

Omunu H, 'Senate Confirms Ajiboye as Auditor-General' *Daily Trust* (Abuja, 30 July 2003) <<http://allafrica.com/stories/200307300187.html>> accessed 14 January 2016

Oyasanya T, 'The Challenges of Due Process Procedure' *Leadership* (Abuja, 1 January 2009) <<http://allafrica.com/stories/200901020450.html>> accessed 6 January 2016

Premium Times, 'Breaking: Orasanye Report: Federal Government Rejects Merger of EFCC, ICPC; to Merge Aviation Agencies' (Abuja, 7 April 2014) <<http://www.premiumtimesng.com/news/158291-breaking-orasanye-report-nigerian-government-rejects-merger-efcc-icpc-merge-aviation-agencies.html>> accessed 10 January 2017

Premium Times, 'Special Courts Coming for Corruption, Kidnapping, Others - Sagay' (Abuja, 24 June 2016) <<http://www.premiumtimesng.com/news/headlines/205873-special-courts-coming-corruption-kidnapping-others-sagay.html>> accessed 10 January 2017

Sahara Reporters, 'N100 Billion Looting of Rivers State: The EFCC Interim Report' (New York, 28 December 2016) <<http://saharareporters.com/2006/12/28/n100-billion-looting-rivers-state-efcc-interim-report>> accessed 14 December 2015

Sahara Reporters, 'Of Looters, Leaders and the EFCC List' *Sahara Reporters* (New York, 10 July 2009) <<http://saharareporters.com/2009/07/10/looters-leaders-and-efcc-list>> accessed 6 January 2017

Siollu M, 'How Goodluck Jonathan Lost the Nigeria Election' *The Guardian* (London, 1 April 2015) <<https://www.theguardian.com/world/2015/apr/01/nigeria-election-goodluck-jonathan-lost>> accessed 26 April 2017

Soniya T, 'Due Process Delays Release of N350bn Capital Vote' *This Day* (Lagos, 9 June 2016) <<http://www.thisdaylive.com/index.php/2016/06/09/due-process-delays-release-of-n350bn-capital-vote/>> accessed 6 January 2017

The Authority, 'Using Auditor-General's Report to Fight Corruption' (Abuja, 18 December 2015) <<http://authorityngr.com/2015/12/Using-Auditor-General-s-report-to-fight-corruption/>> accessed 24 January 2017

The Economist, 'Corrosive Corruption: A Correlation Between Corruption and Development' (London, 2 December 2011) <<http://www.economist.com/blogs/dailychart/2011/12/corruption-and-development>> accessed 29 April 2017

The Economist, 'Corruption in Nigeria: A Prodigal Policeman Returns' (London, 8 July 2010) <<http://www.economist.com/node/16545111>> accessed 21 February 2017

The Economist, 'Nigeria's Election: Three Cheers for Democracy' (London, 4 April 2017) <<http://www.economist.com/news/leaders/21647616-muhammadu-buhari-was-least-bad-presidential-candidate-nigeria-may-he-rise-his>> accessed 26 April 2017

The Guardian, 'Kwara Group Seeks Buhari's Intervention in Trial of Saraki' (Lagos, 22 September 2015) <<http://www.ngrguardiannews.com/2015/09/kwara-group-seeks-buharis-intervention-in-trial-of-saraki/>> accessed 5 January 2016

The Guardian, 'Nigerians Okay Planned Merger of MDAs, EFCC, ICPC, Others' (Lagos, 25 August 2015) <<http://guardian.ng/news/nigerians-okay-planned-merger-of-mdas-efcc-icpc-others/>> accessed 10 January 2017

The Herald, 'CCT Trial: Between Advocates of Justice and Judicial Exploiters' (Lagos, 7 November 2015) <<http://www.theheraldng.com/cct-trial-between-advocates-of-justice-and-judicial-exploiters/>> accessed 5 January 2016

The Punch, 'Details of Buhari, Osinbajo Assets Declaration' (Lagos, 3 September 2015) <<http://www.punchng.com/news/details-of-buhari-osinbajo-assets-declaration/>> accessed 4 September 2015

The Sun, 'How Saraki Emerged Senate President' (Lagos, 10 June 2015) <<http://sunnewsonline.com/new/how-saraki-emerged-senate-president/>> accessed 5 January 2016

This Day, 'White Paper Reverses Panel Report, Disqualifies 37' (Lagos, 18 February 2007)

ThisDayLive, 'National Assembly is Encouraging Corruption, Says Auditor-General' (Lagos, 17 October 2011) <<http://www.thisdaylive.com/articles/national-assembly-is-encouraging-corruption-says-auditor-general/100699/>> accessed 20 January 2016

Timberg C, 'Nigerian Corruption Official Faces Removal' *The Washington Post* (Washington D.C, 4 January 2008) <<http://www.washingtonpost.com/wp-dyn/content/article/2008/01/03/AR2008010301017.html>> accessed 28 November 2015

Tran M, 'Former Nigeria State Governor James Ibori Receives 13-Year Sentence' *The Guardian* (London, 17 April 2012) <<https://www.theguardian.com/global-development/2012/apr/17/nigeria-governor-james-ibori-sentenced>> accessed 6 January 2017

Udo B, 'NDDC Diverted N183bn Niger Delta Development Money, Auditor General Insists' *Premium Times* (Abuja, 19 August 2015) <<http://www.premiumtimesng.com/news/headlines/188697-nddc-diverted-n183bn-niger-delta-development-money-auditor-general-insists.html>> accessed 24 January 2017

Umar N and Adoba I, 'Senate Rejects Auditor-General Nominee' *This Day* (Lagos, 25 January 2002) <<http://allafrica.com/stories/200201250147.html>> accessed 14 January 2016

Vanguard, 'Nigerians are Suffering Because of Buhari's Nepotism - Fayose' (Lagos, 14 August 2016) <<http://www.vanguardngr.com/2016/08/nigerians-suffering-buharis-nepotism-fayose/>> accessed 9 March 2017

Wheat A, 'West Africa: The BP Oil Spill Spells Disaster for Region' *MediaGlobal* (New York, 18 June 2010) <<http://allafrica.com/stories/201006200023.html>> accessed 27 October 2014

Newsletters and Press Releases

CARE, *Promoting Rights and Responsibilities* (Newsletter, October 2000)

Human Rights Watch, 'Nigeria: Firing of Anti-Corruption Czar Won't Fix Agency' (23 November 2011) <<https://www.hrw.org/news/2011/11/23/nigeria-firing-anti-corruption-czar-wont-fix-agency>> accessed 29 April 2017

ICPC, 'Inter-Agency Task Team Reviews Progress Report' (11 June 2015) <<http://icpc.gov.ng/inter-agency-task-team-reviews-progress-report/>> accessed 2 August 2017

International Monetary Fund, 'IMF Board Discusses the Fund's Intensified Involvement in Anti-Money Laundering and Combating the Financing of Terrorism' (Washington D.C 2001) <<http://www.imf.org/external/np/sec/pn/2001/pn01120.htm>> accessed 2 February 2016

The White House, 'Remarks of President Obama to the People of Africa' (Mandela Hall, Africa Union Headquarters, Addis Ababa, Ethiopia 28 July 2015) <<https://www.whitehouse.gov/the-press-office/2015/07/28/remarks-president-obama-people-africa>> accessed 8 November 2016

Transparency International, 'Corruption on the Rise in Africa Poll as Governments Seen Failing to Stop it' (1 December 2015) <http://www.transparency.org/news/pressrelease/corruption_on_the_rise_in_africa_poll_as_governments_seen_failing_to_stop_i> accessed 8 November 2016

Transparency International, 'Transparency International Calls on the Nigerian Government to Step Up its Fight Against Corruption and Welcomes an Investigation into the Oil Sector' (27 February 2014) <http://www.transparency.org/news/pressrelease/transparency_international_calls_on_the_nigerian_government_to_step_up_its> accessed 17 October 2016

Blog Posts

Eriksen TH, 'What's Wrong with the Global North and the Global South' (*Voices From around the World*, January 2015) <<http://gssc.uni-koeln.de/node/454>> accessed 20 April 2017

Green D, 'How Can Aid Agencies Promote Local Governance and Accountability? Lessons from Five Countries' (*From Poverty to Power*, 31 May 2012) <<http://www.oxfamblogs.org/fp2p/?p=10309>> accessed 17 March 2017

Matthew A, 'The Futility in Fighting Corruption in an Inefficient Public Sector: The Nigerian Case' (*The Africa Development Dialogue*, 27 September 2016) <<https://theafricadevelopmentdialogue.com/2016/09/27/the-futility-of-fighting-corruption-in-an-inefficient-public-sector-the-nigerian-case/>> accessed 20 February 2017

Messick R, 'The Political Will to Fight Corruption: Lessons From Nigeria' (*GAB*, 31 December 2014) <<https://globalanticorruptionblog.com/2014/12/31/the-political-will-to-fight-corruption-lessons-from-nigeria/>> accessed 21 February 2017

Okonkwo R, 'Corruption in Nigeria: A Historical Perspective (1947-2002)' (*Africa Unchained* 6 September 2007) <<http://africaunchained.blogspot.co.uk/2007/09/corruption-in-nigeria-historical.html>> accessed 14 December 2016

Pavlakakis J and Mallon L, 'What's the Risk? Causation, Scope of Liability and Civil Liability Reforms' (*Conventus Law* 31 August 2012) <<http://www.conventuslaw.com/archive/australia-whats-the-risk-causation-scope-of-liability-and-civil-liability-reforms/>> accessed 5 April 2017

Stephenson M, 'The Source of the \$1 Trillion in Annual Bribes Figure' (*The Global Anticorruption Blog*, 24 April 2014) <<http://globalanticorruptionblog.com/2014/04/24/the-source-of-the-1-trillion-in-annual-bribes-figure/>> accessed 22 September 2014

Tansey C, 'ECOWAS Community Court of Justice Ruling Holds Government of Nigeria Accountable for Fulfilling the Right to Education Despite Corruption' (*Human Rights Brief*, 11 March 2011) <<http://hrbrief.org/2011/03/ecowas-community-court-of-justice-ruling-holds-the-government-of-nigeria-accountable-for-fulfilling-the-right-to-education-despite-corruption/>> accessed 5 April 2017

Online Sources

Bolu I, 'The Anti-Corruption Legal Framework and its Effect on Nigeria's Development' (SPA Ajibade & Co, Lagos, Nigeria 22 April 2016) <<http://www.spaaajibade.com/resources/wp-content/uploads/2016/04/DBolu.THE-ANTI-CORRUPTION-LEGAL-FRAMEWORK-DRAFT.pdf>> accessed 12 December 2016

Bureau of Public Procurement, 'Background' <http://www.bpp.gov.ng/index.php?option=com_content&view=article&id=109&Itemid=739> accessed 19 April 2017

Encyclopaedia Britannica, 'Olusegun Obasanjo' (25 October 2013) <<https://www.britannica.com/biography/Olusegun-Obasanjo>> accessed 6 January 2017

International Centre for Asset Recovery, 'Selected Case(s): Sani Abacha' <https://forum.assetrecovery.org/asset_recovery/cases> accessed 14 December 2015

Nigerian History Channel, 'Nigeria's Great Speeches' <<https://maxsiollun.wordpress.com/great-speeches-in-nigerias-history/>> accessed 16 December 2016

World Bank, 'FAQs: Global Poverty Line Update' <<http://www.worldbank.org/en/topic/poverty/brief/global-poverty-line-faq>> accessed 29 April 2017.

Websites

<http://projects.worldbank.org/search?lang=en&searchTerm=nigeria%20>

- World Bank Projects in Nigeria

<http://serap-nigeria.org/>

- Socio-Economic Rights Action Project

<http://www.bpp.gov.ng/>

- Bureau of Public Procurement

<http://www.dlprog.org/about-us.php>

- Development Leadership Programme

http://www.gfintegrity.org/	-	Global Financial Integrity
http://www.internationalbudget.org/	-	International Budget Partnership
http://www.publishwhatyoupay.org/	-	Publish What You Pay
http://www.right2info.org/	-	Right to Info
http://www.worldbank.org/	-	World Bank
https://ptfund.org/about-2/	-	Partnership for Transparency Fund

Resolutions and Decisions

European Parliament Resolution 2013/2074 (INI) (8 October 2013)

UN Commission on Human Rights Resolution 2005/68 (20 April 2005) UN Doc E/CN.4/RES/2005/68

UN Conference of the State Parties to the United Nations Convention Against Corruption Resolution 4/1 (24-28 October 2011) UN Doc CAC/COSP/4

UN Human Rights Council Resolution 18/13 (26 September 2011) UN Doc A/HRC/18/L.21

UN Human Rights Council Resolution 29/11 (29 June 2015) UN Doc A/HRC/29/L.19

UNGA Res 3201 (S-VI) (1 May 1974) UN Doc A/RES/S-6/3201

UNGA Res 3514 (XXX) (15 December 1975) UN Doc A/RES/3514

UNGA Res 41/128 (4 December 1986) UN Doc A/RES/41/128

UNHRC Res 17/23 (19 July 2011) UN Doc A/HRC/RES/17/23

UNHRC Res 18/13 (14 October 2011) UN Doc A/HRC/RES/18/13

UNHRC Res 19/38 (19 April 2012) UN Doc A/HRC/RES/19/38

UNHRC Res 22/12 (10 April 2013) UN Doc A/HRC/RES/22/12

UNHRC Res 23/9 (20 June 2013) UN Doc A/HRC/RES/23/9

United Nations Conference of the State Parties to the United Nations Convention Against Corruption Resolution 3/1 (9-13 November 2009) CAC/COSP/2009/3

Other Legal Documents

Federal High Court (Corruption and Related Offences) Sentencing Guidelines and Practice Direction 2015

ILC Articles on Responsibility of States for Internationally Wrongful Acts (*Yearbook of the International Law Commission*, Vol II, Pt 2 2001)

International Bank for Reconstruction and Development, Articles of Agreement 1944

Reference Books

Black's Law Dictionary (6th edn, West Group 1990)

ILC, *Yearbook of International Law Commission* (Vol II, Pt 2 United Nations 2001) 153-155

Oxford Dictionary Online (2016) <<https://en.oxforddictionaries.com/definition/corrupt>> accessed 28 October 2016.

West's Encyclopaedia of American Law (2nd edn 2008)